

[SAPL4][a41y1987]ELECTRICITY ACT 41 OF 1987[/SAPL4]

[ASSENTED TO 25 AUGUST 1987] [DATE OF COMMENCEMENT: 1  
NOVEMBER 1987]

(English text signed by the State President)

as amended by

Electricity Amendment Act 58 of 1989

Abolition of the National Energy Council Act 95 of 1991

Abolition of Racially Based Land Measures Act 108 of 1991

Electricity Amendment Act 46 of 1994

Electricity Amendment Act 60 of 1995

Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996

NOTE: S. 6 of this Act has been amended, in so far as it applies to the Province of Natal and that part of KwaZulu which falls outside that province, by s. 25 of the KwaZulu and Natal Joint Services Act 84 of 1990. See Schedule 3 to Act 84 of 1990.

ACT

To provide for the continued existence of the Electricity Control Regulator and for control of the generation and supply of electricity; and for matters connected therewith.

[Long title amended by s. 10 of Act 46 of 1994.]

[a41y1987s1]1Definitions

In this Act, unless the context otherwise indicates-

'board' .....

[Definition of 'board' deleted by s. 1 (a) of Act 46 of 1994.]

'chief executive officer' means the chief executive officer appointed in terms of section 5A (1);

[Definition of 'chief executive officer' inserted by s. 1 (a) of Act 60 of 1995.]

'consumer' means a person supplied with electricity;

'distribution' means the furnishing of electricity to end-users;

'Eskom' means the juristic person referred to in section 2 of the Eskom Act, 1987;

'financial institution' means a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990);

[Definition of 'financial institution' inserted by s. 1 (b) of Act 60 of 1995.]

'licence' means a licence granted by the regulator under this Act for the generation and supply of electricity;

[Definition of 'licence' amended by s. 10 of Act 46 of 1994.]

'licensee' means the holder of a licence;

'local authority' means any institution or body contemplated in the definition of 'local government body' in section 1 of the Local Government Transition Act, 1993 (Act 209 of 1993);

[Definition of 'local authority' substituted by s. 1 (b) of Act 46 of 1994.]

'Minister' means the Minister of Mineral and Energy Affairs;

[Definition of 'Minister' substituted by s. 1 (c) of Act 46 of 1994.]

'provision' means the furnishing of electricity for distribution;

'regulation' means a regulation made under this Act;

'regulator' means the National Electricity Regulator referred to in section 2;

[Definition of 'regulator' inserted by s. 1 (d) of Act 46 of 1994.]

'supply' means the provision or distribution of electricity or both;

'this Act' includes the regulations;

'undertaker' means any person authorized under this Act or any other law to carry on an undertaking which sells at least one gigawatt hour of electricity per annum;

'undertaking' means any undertaking for the supply of electricity within a defined area, with all the assets and liabilities appertaining thereto, whether carried on under the authority of a licence or otherwise and whether under the control of Eskom, the Government, (including the South African Transport Services), a local authority, a company or other association of persons or a natural person.

[NB: In terms of s. 36 (1) of the Legal Succession to the South African Transport Services Act 9 of 1989, the reference to 'the South African Transport Services' in the above provision shall be construed as a reference to the Company (Transnet Limited) and the Corporation (the South African Rail Commuter Corporation Limited).]

## [a41y1987s2]2National Electricity Regulator

The Electricity Control Board referred to in section 22 of the Electricity Act, 1958 (Act 40 of 1958), shall continue to exist as the 'National Electricity Regulator'.

[S. 2 substituted by s. 2 of Act 46 of 1994.]

## [a41y1987s2A]2A Juristic personality of regulator

The regulator shall be a juristic person.

[S. 2A inserted by s. 2 of Act 60 of 1995.]

## [a41y1987s3]3Objects of regulator

The objects of the regulator are, subject to the provisions of this Act, to exercise control over the electricity supply industry so as to ensure order in the generation and efficient supply of electricity, and to perform such other functions as may be assigned to it by or under this Act.

[S. 3 amended by s. 10 of Act 46 of 1994.]

## [a41y1987s4]4Functions of regulator

(1) The regulator may-

(a) issue licences for the generation, provision and, within the area determined by it, distribution of electricity;

(b) determine the prices at and conditions on which electricity may be supplied by a licensee;

(c) at the request of any licensee or its consumer settle disputes between licensees among themselves or between licensees and their consumers or prospective consumers regarding-

(i) the right to supply;

(ii) the quality of such supply and the provision of services in connection therewith;

- (iii) the conditions on and prices at which electricity is supplied;
- (iv) the installation and functioning of meters;
- (v) the suitability of the equipment of the licensee;
- (vi) delays in or refusal of supply by a licensee;
- (vii) any other matter in respect of which a licensee or its consumer requests the regulator to act as mediator;

- (d) collect information which it deems necessary from undertakers or consumers;

- (e) perform inspections of the equipment of licensees;

- (f) exercise the other powers assigned to it by this Act or the Eskom Act, 1987.

(2) Any decision of the regulator on a dispute contemplated in subsection (1) (c) shall be binding on the parties to the dispute.

(3) .....

[Sub-s. (3) deleted by s. 3 of Act 46 of 1994.]

(4) The regulator may advise the Minister on any matter relating to the electricity supply industry and it may for this purpose carry out such investigations as it or the Minister deems necessary.

[S. 4 amended by s. 10 of Act 46 of 1994.]

[a41y1987s5]5Composition of regulator

(1) (a) The regulator shall consist of not less than seven and not more than nine members (of whom not more than three may be persons employed in the Public Service) appointed by the Minister.

(b) A member of the regulator (excluding a member who is in the full-time employment of the State) shall be appointed on such conditions, including conditions relating to the payment of remuneration and allowances, as the Minister may determine with the concurrence of the Minister of Finance.

(c) The members of the regulator shall as far as practicable include persons having sufficient knowledge of matters relating to electricity tariffs, cost accounting, legal aspects or electricity supply systems.

(d) The Minister shall designate one of the members of the regulator as chairman: Provided that in the absence of the chairman from a meeting of the regulator, the members present at that meeting may elect one of their number to preside at that meeting on condition that an acting chairman has not been appointed by the Minister.

(2) .....

[Sub-s. (2) deleted by s. 4 of Act 46 of 1994.]

(3) Any person shall be disqualified from being appointed as a member of the regulator if he is of unsound mind or if he has at any time been convicted of an offence involving dishonesty, or has been sentenced for any other offence to a period of imprisonment without the option of a fine.

(4) A member of the regulator shall vacate his office if-

- (a) he tenders his resignation in writing to the Minister;
- (b) he becomes disqualified from being appointed as a member of the regulator;
- (c) he has been absent, without leave of the regulator, from more than two consecutive meetings of the regulator;
- (d) the Minister withdraws his appointment on the ground thereof that in the opinion of the Minister he is incompetent or unfit to fulfil his duties.

[S. 5 amended by s. 10 of Act 46 of 1994.]

[a41y1987s5A]5A Appointment and functions of chief executive officer

(1) The Minister shall appoint a member of the regulator as chief executive officer of the regulator.

(2) The chief executive officer-

- (a) shall be responsible for the management of-
  - (i) the affairs of the regulator in accordance with the provisions of this Act and subject to the directions of the Minister and the regulator; and
  - (ii) administrative control over the employees appointed under paragraph (b);

(b) may, subject to paragraph (c) and on such conditions as the regulator may determine, appoint such employees as may be required to perform the work connected with the functions of the regulator;

(c) shall pay such employees such remuneration, allowances, subsidies and other benefits as the regulator may determine in accordance with a remuneration structure approved from time to time by the Minister with the concurrence of the Minister of Finance;

(d) may from time to time on such conditions as he or she may determine-

(i) provide collateral security, including guarantees, to a financial institution in respect of a loan granted to any employee of the regulator by such financial institution to enable such employee to acquire, improve or enlarge immovable property for the purposes of occupation; and

(ii) establish and manage or cause to be managed medical aid schemes and bursary schemes for purposes of study for such employees and their dependants.

[S. 5A inserted by s. 1 of Act 58 of 1989, repealed by s. 9 (1) of Act 95 of 1991 and inserted by s. 3 of Act 60 of 1995.]

[a41y1987s5B]5B Funds of regulator

(1) The funds of the regulator shall consist of-

(a) licence fees obtained under subsection (2);

(b) donations or contributions received from any person, institution, government or administration; and

(c) interest on investments.

(2) The Minister may, on receipt of the business plan and statement referred to in subsection (5) (b), by notice in the Gazette prescribe licence fees that are payable by licensed generators of electricity.

(3) Licence fees referred to in subsection (2) shall-

(a) only be imposed after-

(i) the amount and composition thereof and motivation therefor, based on the business plan submitted in terms of subsection (5) (b), have been published for comment and any resulting comment has been considered; and

(ii) the business plan and statement referred to in subsection (5)  
(b) have been approved;

(b) be valid for the period specified in the notice referred to in  
subsection (2);

(c) be payable in respect of the electricity, calculated in kilowatt  
hours, generated for supply by any licensee concerned during the previous calendar year;

(d) be payable by such licensee at the times and in the instalments  
determined by the regulator; and

(e) bear interest, in the case of non-payment or late payment, at such  
rate as the regulator may determine.

(4) (a) The regulator-

(i) shall utilise its funds to defray expenses in connection with the  
performance of its functions; and

(ii) may, with the approval of the Minister, granted with the  
concurrence of the Minister of Finance, establish and manage or cause to be managed a  
pension or provident fund or an alternative pension or provident fund for its employees.

(b) Donations and contributions referred to in subsection (1) (b) shall-

(i) only be accepted with the approval of the Minister, granted with  
the concurrence of the Minister of Finance; and

(ii) be utilised in accordance with the conditions determined by the  
donor or contributor concerned with such approval and concurrence.

(5) The regulator-

(a) may, with the approval of the Minister, granted with the  
concurrence of the Minister of Finance, authorise the chief executive officer to invest any  
unspent portion of the funds of the regulator: Provided that any surplus at the end of a  
financial year shall be carried over to the next financial year and be utilised to defray  
expenses incurred by the regulator during that financial year;

(b) shall during each financial year, at such time as the Minister may  
determine, submit a business plan and statement of the regulator's estimated income and  
expenditure during the following financial year to the Minister for his or her approval,  
granted with the concurrence of the Minister of Finance;

(c) shall for the purposes of the Income Tax Act, 1962 (Act 58 of 1962), be deemed to be an institution contemplated in section 10 (1) (cA) (i) of that Act.

[S. 5B inserted by s. 3 of Act 60 of 1995.]

[a41y1987s5C]5C Accounting and accountability

(1) The chief executive officer shall be the accounting officer of the regulator and shall-

(a) open an account in the name of the regulator with a financial institution and shall deposit therein all moneys received in terms of section 5B (1);

(b) cause proper records to be kept of all financial transactions, assets and liabilities of the regulator; and

(c) as soon as possible after the end of each financial year, cause to be prepared a statement of the income and expenditure of the regulator for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year.

(2) The records, statement and balance sheet referred to in subsection (1) shall be audited by the Auditor-General.

(3) The financial year of the regulator shall be the period ending on 31 March in each year.

[S. 5C inserted by s. 3 of Act 60 of 1995.]

[a41y1987s5D]5D Reporting

(1) The regulator shall-

(a) furnish the Minister with such information and particulars as he or she may from time to time require in connection with the affairs and financial position of the regulator; and

(b) annually, within six months after the end of the financial year, submit to the Minister a report with regard to the functions, affairs and financial position of the regulator in respect of that financial year.

(2) Without derogating from the generality of the provisions of subsection (1) (b), the annual report referred to in that subsection shall inter alia include-



(a) an audited balance sheet and statement of income and expenditure, including any notes thereon and documents annexed thereto whereby relevant information is provided;

(b) particulars of any donations or contributions received under section 5B (1) (b);

(c) information regarding licences granted, renewed, amended, transferred, ceded, suspended or withdrawn;

(d) the report on the audit referred to in section 5C (2);

(e) a report regarding the execution of the business plan of the regulator;

(f) a report regarding the envisaged strategies of the regulator; and

(g) such other information as the Minister may from time to time determine.

(3) The annual report submitted in terms of subsection (1) (b) shall be tabled in Parliament by the Minister within 14 days after receipt thereof or, if Parliament is not then in session, within 14 days after the commencement of the next ensuing session.

[S. 5D inserted by s. 3 of Act 60 of 1995.]

[a41y1987s6]6Undertakings to be carried on under licence

(1) Subject to the provisions of subsection (2), no person shall carry on or engage in any manner in any undertaking for the generation of electricity or for the supply thereof except under the authority of a licence: Provided that no licence shall be required by any person, excluding a local authority, who does not sell more than five gigawatt hours of electricity per annum.

(2) The regulator may, on the conditions determined by it and with the approval of the Minister, exempt from the provisions of subsection (1) any particular undertaker or class of undertaker: Provided that the regulator may at any time with the approval of the Minister withdraw any exemption so granted in whole or in part.

[S. 6 amended by s. 2 of Act 58 of 1989 and by s. 47 (1) of Act 108 of 1991 and substituted by s. 5 of Act 46 of 1994.]

[a41y1987s7]7Application for licence

(1) An application for a licence shall be made to the regulator in the manner prescribed by regulation.

(2) The regulator may at its discretion require an applicant to publish a notice of such application in the form approved by the regulator in a newspaper circulating in the area in which it proposes to carry on its undertaking.

(3) Any objection to the grant of the application shall, if a notice was published in terms of subsection (2), be lodged with the regulator within 60 days after publication thereof, and the regulator may at its discretion hear the objections in public at a time and place of which not less than 14 days notice shall be given to the applicant and to every objector.

(4) The regulator shall make known its decision regarding the application as soon as practicable after the hearing.

(5) The provisions of subsections (1), (2), (3) and (4) shall mutatis mutandis apply to an application for an amendment of a licence.

[S. 7 amended by s. 10 of Act 46 of 1994.]

[a41y1987s8]8Form and conditions of licence

(1) Every licence shall be in such form as the regulator may determine and shall, in addition to the conditions referred to in subsection (2), contain a schedule of the approved tariffs to be charged by the licensee for the supply, provision or distribution of electricity to different classes of consumers.

(2) The regulator may determine conditions in regard to-

- (a) the maximum capacity of supply of the undertaking;
- (b) the area of supply of the undertaking;
- (c) the classes of consumers to which electricity may be supplied;
- (d) the conditions on which the licensee may supply electricity to its consumers;
- (e) the obligation of the licensee to supply electricity;
- (f) the period within which the provision of electricity shall commence;
- (g) the quality of supply;

(h) any other matter connected with the carrying on of the undertaking.

(3) The conditions on which a local authority supplies electricity outside its area of jurisdiction in terms of a licence issued to it, shall be the same as those applicable in respect of the supply within its area of jurisdiction: Provided that the regulator may prescribe other conditions.

(4) A licensee shall not cede or transfer his licence to any other person without the consent of the regulator.

(5) The regulator may, at any time after granting a licence, by written notice to the holder thereof impose any addition to or amendment of the conditions of the licence.

[S. 8 amended by s. 10 of Act 46 of 1994.]

[a41y1987s9]9Schedule of approved tariffs in terms of licence, and revision thereof

(1) Unless the regulator determines otherwise, the licensee shall not charge any consumer with other tariffs than those specified in the schedule of approved tariffs in his licence.

(2) The regulator may from time to time revise the schedule of approved tariffs in a licence and may require the licensee concerned to submit such information as the regulator may require for this purpose.

(3) The regulator may, in specific circumstances, approve a deviation from a schedule of approved tariffs.

(4) The regulator may at its discretion require the licensee to publish an application for the revision of the schedule of approved tariffs in his licence, in which case the provisions of subsections (2), (3) and (4) of section 7 shall apply mutatis mutandis to such application.

[S. 9 amended by s. 10 of Act 46 of 1994.]

[a41y1987s10]10 Duties of licensee

(1) Every licensee shall up to the limit, if any, of electricity which he may generate or supply in terms of his licence, supply electricity within the area of supply mentioned in his licence to every applicant who is in a position to make satisfactory arrangements for payment therefor.

(2) In case of undue delay or refusal on the part of the licensee to supply any applicant with electricity, such applicant may appeal to the regulator, which shall decide

whether the licensee shall undertake the supply and which shall determine the conditions on which it shall be done.

[Sub-s. (2) amended by s. 10 of Act 46 of 1994.]

(3) No person shall be entitled to the supply of electricity for any premises having a separate supply of electricity unless he has agreed to pay such minimum annual sum as will, in the opinion of the regulator, give the licensee an income which is sufficient to cover the expenses of the licensee in connection with such supply or unless he has given security for the payment of the said amount.

[Sub-s. (3) amended by s. 10 of Act 46 of 1994.]

[a41y1987s11]11 Failure to carry out conditions of supply

A licensee shall not, except for reasons beyond his control, reduce or discontinue the supply of electricity to a consumer, unless-

- (a) the consumer is insolvent; or
- (b) the consumer has failed to pay the agreed charges or to comply with the conditions of supply and has failed to remedy his default within 14 days after receiving from the licensee a written notice by post calling upon him to do so.

[a41y1987s12]12 Failure of licensee to meet obligations

(1) If any licensee fails to meet his obligations in terms of the conditions of his licence or the provisions of this Act, the regulator may serve upon him by post a notice in writing to meet those obligations within 30 days or such longer period as the regulator may determine, and if the licensee fails to comply with the requirements of the notice-

- (a) he shall be guilty of an offence and upon conviction be punishable as provided in section 27;
- (b) the regulator may recommend to the Minister to authorize an appropriate undertaker in writing to enter upon and take possession of the undertaking of the licensee, and such undertaker shall in that event operate the undertaking for and on account of the licensee and at the risk and expense of the licensee, remitting the balance, if any, of the net income derived from the undertaking to the licensee;

[Para. (b) substituted by s. 6 (a) of Act 46 of 1994.]

- (c) the regulator may withdraw his licence at any time.

[Sub-s. (1) amended by s. 10 of Act 46 of 1994.]

(2) For the purposes of paragraph (b) of subsection (1)-

(a) the licensee shall pay to the undertaker concerned a fee, the amount of which shall be determined by the Minister, to cover the estimated expenditure incurred by such undertaker in respect of the services so rendered by it in operating the undertaking;

(b) such entry and taking into possession by the undertaker shall not prejudice the security of any debenture-holder or mortgagee or his right of enforcing such security;

(c) the undertaker concerned shall not restore possession of the undertaking to the licensee until such time as the Minister is satisfied that the circumstances on account of which the entry was made no longer exist or will no longer hinder the proper functioning of the undertaking and that the licensee has satisfied his obligations under this Act and the conditions of his licence.

[Sub-s. (2) substituted by s. 6 (b) of Act 46 of 1994.]

(3) The application of subsection (1) (b) or (c) shall not prejudice any civil claims which any consumer or other person may have against the licensee arising from his failure to fulfil his obligations in terms of the conditions of his licence.

(4) In the event of a licence being cancelled in terms of subsection (1) (c), the Minister may cause an appropriate undertaker in writing to take possession of the undertaking, and the undertaker concerned shall in such event for its own account carry on such undertaking or provide for the carrying on of the undertaking by another person: Provided that whoever carries on the undertaking shall take over the assets of the undertaking.

[Sub-s. (4) substituted by s. 6 (c) of Act 46 of 1994.]

[a41y1987s13]13      Prohibition on transfer of right to supply without approval of regulator

(1) Subject to the provisions of subsection (2), no undertaker shall transfer his undertaking or any part thereof or his right of supply to any other undertaker or prospective undertaker without the approval of the regulator.

(2) Any undertaker who has before the commencement of this Act, in terms of an agreement with a local authority, obtained a right to supply electricity within the area of jurisdiction of that local authority, shall be exempted from the provisions of this section.

(3) An application for approval of the transfer of an undertaking or any part of an undertaking or of a right to supply may be made by the transferor or transferee and shall be accompanied by the information required by the regulator, and a copy of the

application must be served by the applicant on the transferee or transferor, as the case may be.

(4) The regulator may at its discretion require the applicant to publish a notice of such application in the form approved by the regulator, in a newspaper circulating in the area in which the undertaking or part of the undertaking is carried on.

(5) Any objection to the approval of the application shall, if a notice was published in terms of subsection (4), be lodged with the regulator within 60 days after publication thereof, and the regulator may at its discretion hear the objections in public at a time and place of which at least 14 days' notice shall be given to the applicant, the transferor or transferee, as the case may be, and every objector.

(6) If the regulator is of the opinion that it is in the interest of the efficient supply of electricity or the consumers of electricity or in the public interest, it may approve an application referred to in subsection (3) on the conditions determined by it, and the transfer shall take effect 12 months after the decision of the regulator has been made known, unless the transferor and the transferee agree on an earlier date.

(7) If there are any assets involved in the transfer, the transferee shall compensate the transferor in terms of section 14 for the reasonable value thereof.

(8) No provision of this Act shall prohibit an undertaker to enter into an agreement with any other person in terms of which such person shall erect, manage or carry on such undertaking or any part of the undertaking on behalf of the undertaker: Provided that the undertaker shall not be absolved from his powers and obligations under this Act.

(9) (a) An undertaker who wishes to transfer his undertaking, or a part thereof, to another undertaker in terms of this section, may also transfer to such other undertaker, by way of a deed of cession attested by a notary, any servitude or other similar right in terms of which he may effect improvements on or over particular land and may conduct electricity over such land, irrespective of whether or not the permission of the owner of that land has been obtained, and the relevant Registrar of Deeds shall make such entries or endorsements in or on any relevant register, title deed or other document in his office or submitted to him as he deems necessary to give effect to the provisions of this section.

(b) No office fees or other levies are payable in respect of such entry or endorsement.

(c) Any transfer that took place prior to the date of commencement of this subsection and which could have taken place in terms of the provisions of paragraph (a) if paragraph (a) existed prior to such date, shall be deemed to have taken place in terms of the provisions of paragraph (a).

[Sub-s. (9) added by s. 3 of Act 58 of 1989.]

[S. 13 amended by s. 10 of Act 46 of 1994.]

[a41y1987s14]14 Compensation for assets of undertakings taken in possession or taken over

(1) At the taking into possession of an undertaking in terms of section 12 or the take-over of assets in terms of section 13, the undertaker concerned or the transferee, as the case may be, shall compensate the former undertaker for the net value of the assets belonging to or used in connection with the carrying on of the undertaking.

[Sub-s. (1) substituted by s. 7 of Act 46 of 1994.]

(2) Such value shall be the fair value at the time of take-over, due regard being had to the nature and condition of the assets, and their suitability for the purposes of the undertaking and for immediate use.

(3) (a) In determining the value in question the following shall not be taken into account:

- (i) That it is a compulsory take-over;
- (ii) the goodwill of the undertaking;
- (iii) the prospective profits of the undertaking;
- (iv) any similar circumstances or considerations.

(b) Where the costs of the assets have already been redeemed in part or in full by means of the tariff income, this fact shall be taken into account in determining the value of the assets in order to ensure that the consumers concerned, if any, will, after the assets have been taken over, only be liable for the redemption, by way of tariffs to be charged, for those portions of the assets which have not yet been redeemed out of the tariff income.

(4) If any dispute arises between the parties as to the amount of compensation payable in terms of this section, the amount shall be determined by arbitration with due observation of the principles laid down in this section and in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

[a41y1987s15]15 Sale and supply of electricity within area of jurisdiction of local authority

(1) Subject to the provisions of subsection (2), the sale and supply of electricity within the area of jurisdiction of a local authority, shall be under the control of that authority, except in so far as any undertaker has lawfully acquired the right of supply

within that area or any portion thereof, whether under a licence or by agreement with the local authority or otherwise.

(2) Notwithstanding anything to the contrary contained in any other law, the Minister may from time to time, if in his opinion it is in the national interest, direct the regulator to gather information in respect of the supply of electricity by a local authority, and the Minister may accordingly make arrangements or issue directives to the local authority for the promotion of the efficient utilization of electricity: Provided that such arrangements or directives shall not be made or issued except after consultation with the local authority in question and the Minister referred to in section 2 (2) (a) (i) of the Regional Services Councils Act, 1985 (Act 109 of 1985).

[Sub-s. (2) amended by ss. 8 and 10 of Act 46 of 1994.]

[a41y1987s16]16      Proposed erection or enlargement of power stations by local authorities

(1) Whenever any local authority intends to erect a power station, or to enlarge any existing power station to an extent exceeding within any period of 12 months 10 per cent of the existing rated generating capacity, it shall apply to the regulator for approval and shall submit to it a full report by a professional engineer on its proposals regarding the erection or enlargement.

(2) Before considering the application, the regulator shall call upon Eskom for a report on the proposals, and thereupon the local authority shall supply Eskom with such information as Eskom may require for the purpose of drawing up the report.

(3) In its report to the regulator Eskom shall state what in its opinion is the best course for the local authority to pursue, and in particular whether Eskom can itself generate a supply of electricity with advantage to the interest of ratepayers and consumers, and if so, Eskom shall submit its estimates and terms.

(4) The local authority shall pay to Eskom, in respect of any report furnished under this section, a sum of money the amount of which, if not agreed upon, shall be determined by the Minister.

[S. 16 amended by s. 10 of Act 46 of 1994.]

[a41y1987s17]17      Exclusion of supply in area of jurisdiction of local authority

The right to supply electricity within the area of jurisdiction of a local authority or to construct transmission or distribution lines for such supply through or over any portion of such area, shall, unless such supply is to the South African Transport Services for traction purposes, be subject to the consent of that authority: Provided that if it is alleged that such consent is unreasonably withheld, the matter shall be decided by the regulator



after a public hearing at a time and place of which not less than 14 days' notice shall be given to the parties by the regulator.

[S. 17 amended by s. 10 of Act 46 of 1994.]

[NB: In terms of s. 36 (1) of the Legal Succession to the South African Transport Services Act 9 of 1989, the reference to 'the South African Transport Services' in the above provision shall be construed as a reference to the Company (Transnet Limited) and the Corporation (the South African Rail Commuter Corporation Limited).]

[a41y1987s18]18      Permission to use water of public stream

(1) Notwithstanding anything to the contrary contained in the Water Act, 1956 (Act 54 of 1956), an undertaker, whether or not he is a riparian owner as defined in that Act, may apply to a water court established by Chapter IV of that Act for permission-

(a)      to use a defined quantity of the normal flow of a public stream; or

(b)      to abstract or to impound or to store a definite quantity of the surplus water of a public stream within or outside the channel of the stream,

for the generation of steam or electricity or any other form of energy, condensing, cooling or incidental purposes, in any catchment area.

(2) The water court may grant such permission subject to such conditions as the court may impose for the purpose of preventing or controlling the heating or preventing pollution of the water in a public stream, and shall, if it appears necessary, assess the amount of compensation which shall be paid in respect of any use, abstraction, impounding or storing of water so permitted, and shall determine the persons to whom and the manner in which compensation shall be paid.

(3) For the purposes of the acquisition of servitudes under Chapter VIII of the said Act, an undertaker who has been granted permission under subsection (1) of this section shall be deemed to be a person entitled to the use of the water in question, and land required for pumping works and for works necessary for water power plant shall be regarded as necessary for or incidental to the passage of water.

[a41y1987s19]19      Expropriation of land and interests in land

(1) Notwithstanding anything to the contrary contained in any law, an undertaker may, with the approval of the Minister and subject to such conditions as the Minister may impose, by expropriation acquire such land or any such right in, over or in respect of land as such undertaker may require for the exercise of his powers.

(2) The Minister shall grant such approval only if he is satisfied, after considering a report by the regulator-

(a) that such undertaker is unable to acquire any such land or right on reasonable terms, other than terms relating to compensation, by agreement with the owner; and

(b) that such land or right is reasonably required by such undertaker for the exercise of the powers referred to in subsection (1):

Provided that neither the Minister nor the regulator may make a finding regarding compensation payable to the owner: Provided further that where such an undertaker and the owner cannot reach agreement as to the compensation, such compensation shall be determined in accordance with the provisions of the Expropriation Act, 1975, referred to in subsection (4).

[Sub-s. (2) amended by s. 10 of Act 46 of 1994.]

(3) (a) Before furnishing its report under subsection (2), the regulator shall at a public hearing determine whether such an undertaker is unable to acquire such land or right on reasonable terms, other than terms relating to compensation, by agreement with the owner and whether the land or right in question is so required by such undertaker.

(b) The regulator shall give at least 14 days' notice of the hearing to such undertaker and to the owner concerned, who shall be entitled at such a hearing to raise his objections against the expropriation.

(c) The regulator shall notify the said owner and undertaker of its findings.

[Sub-s. (3) amended by s. 10 of Act 46 of 1994.]

(4) Upon the approval of the Minister to such acquisition being granted, the provisions of sections 7 to 23 inclusive of the Expropriation Act, 1975 (Act 63 of 1975), shall mutatis mutandis apply in connection with such acquisition, and in such application any reference in those sections-

(a) to the 'Minister' and the 'State' shall be construed as a reference to the undertaker in question;

(b) to 'section 2' shall be construed as a reference to this section.

(5) If the owner of any land agrees to such land or any right in, over or in respect of such land being acquired by such undertaker for the exercise of any power referred to in subsection (1), but is not prepared to accept the compensation offered for it, the parties may agree to the land or right being acquired by the undertaker subject to the determination of the compensation payable in accordance with the provisions of sections 12, 14 and 15 of the Expropriation Act, 1975, depending on which provisions would have been applicable if the land or right had been expropriated in terms of the provisions of the

said Act: Provided that in any such case the date of notice, as defined in section 1 of the said Act, shall be deemed to be the date on which that agreement was concluded: Provided further that if an application for such determination of the compensation is not made within six months, or such longer period as the parties may agree to, after that date, to the appropriate court, the compensation offered by such undertaker shall be the compensation payable for the acquisition of such land or right.

[a41y1987s20]20      Requirements regarding generating plant

(1) Any person erecting machinery for the generation of electricity shall erect it in accordance with the regulations in respect of frequency, pressure and type of current, unless-

(a) it is intended for the owner's own use and its rated capacity does not exceed 500 kilowatts; or

(b) it is specially exempted by the regulator.

[Para. (b) amended by s. 10 of Act 46 of 1994.]

(2) (a) No person shall cause electricity to be generated for his own use with any plant the rated capacity of which exceeds 500 kilowatts, unless such plant, if not exempted by the regulator, complies with the regulations and the requirements laid down by the regulator to facilitate co-ordination with other existing or future undertakings.

(b) Any person who intends to erect or to cause to be erected any such plant for the generation of electricity for his own use, shall, prior to the erection thereof, furnish to the regulator such particulars as to such plant as will enable the regulator to satisfy itself that the plant complies with this Act and the regulations.

[Sub-s. (2) amended by s. 10 of Act 46 of 1994.]

[a41y1987s21]21      Appeals from decisions of regulator

(1) Any undertaker, local authority or consumer or any number of consumers purchasing 100 megawatt-hours of electricity per annum or more, or any number of consumers exceeding 10, or a party to a dispute settled by the regulator in terms of section 4 (1) (c), shall have a right of appeal from a decision of the regulator to the Minister.

[Sub-s. (1) substituted by s. 102 of Act 88 of 1996.]

(2) No such appeal shall be heard unless it is lodged within 60 days after the decision of the regulator has been made known or otherwise brought to the notice of the appellant.

(3) (a) For the purposes of subsection (2) the Minister shall refer every such appeal to the regulator for a report to him in connection with the matter in dispute.

(b) The Minister may, when he so refers an appeal to the regulator, indicate any matter to which he desires that special attention be given by the regulator.

(4) The regulator shall not report to the Minister in connection with any such appeal unless the appellant has been afforded an opportunity to submit to the regulator, within a period determined by the regulator, not being less than 30 days after being required to do so in writing by the regulator, any oral or written representation in connection with the appeal.

[S. 21 amended by s. 10 of Act 46 of 1994.]

[a41y1987s22]22      Regulator's powers of entry, inspection and calling for returns

(1) The regulator or any person authorized thereto in writing by it, 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 the regulator or to him such periodical or other returns in such form as the regulator may from time to time prescribe, and such particulars in respect of the undertaking as the regulator may from time to time demand.

(2) The regulator may require that the accuracy of the returns and particulars be verified on oath by the licensee.

(3) Any person who refuses to allow any such inspection or fails to comply with any such demand or who wilfully hinders or obstructs the regulator or person so authorized in any such inspection shall be guilty of an offence and liable on conviction-

(a) to a fine not exceeding the amount which the Minister may from time to time prescribe by regulation for each day on which the refusal or failure continues; or

(b) in respect of such hindrance or obstruction to a fine not exceeding the amount which the Minister may from time to time so prescribe or to imprisonment not exceeding six months or to both such fine and such imprisonment.

(4) If any person divulges information obtained by him upon such inspection except for the purposes of carrying out his duties under this Act or upon the order of or in answer to questions put to him as a witness in a court of law or at an arbitration under this Act, he shall be guilty of an offence and liable on conviction to a fine not exceeding the amount which the Minister may from time to time prescribe by regulation or to

imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(5) Any person who has been authorized in writing in terms of subsection (1), shall exhibit such authorization at the request of any person materially affected by his activities in terms of the said subsection.

[S. 22 amended by s. 10 of Act 46 of 1994.]

[a41y1987s23]23 Undertaker's powers of entry and inspection

(1) Any person authorized thereto in writing by an undertaker may at all reasonable times enter any premises to which electricity is or has been supplied by such undertaker, in order to inspect the lines, meters, fittings, works and apparatus belonging to such undertaker, or for the purpose of ascertaining the quantity of electricity consumed, or where a supply is no longer required, or where such undertaker may cut off the supply, for the purpose of removing any lines, meters, fittings, works and apparatus belonging to such undertaker.

(2) Any person wishing to enter any premises in terms of subsection (1) shall-

(a) if possible, make the necessary arrangements with the legal occupant of the premises before entering such premises and shall adhere to all reasonable security measures, if any, of the occupant or owner of the premises;

(b) exhibit his authorization at the request of any person materially affected by his activities.

(3) Damage caused by such entry, inspection or removal shall be repaired or compensated for by the undertaker.

[a41y1987s24]24 Lines, meters and other apparatus are not fixtures

(1) Any lines, meters, fittings, works or apparatus belonging to an undertaker and lawfully placed or installed in or upon any premises not in his possession shall, whether or not fixed to any part of such premises, remain the property of and may be removed by such undertaker, and shall not be subject to the landlord's hypothec for rent of such premises, and are not liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of such premises, provided adequate indication is given on such premises that such undertaker is the actual owner of such lines, meters, fittings, works or apparatus.

(2) For the purposes of this section and section 23, lines, meters, fittings and apparatus let, rented or disposed of by the undertaker on terms of payment by instalments shall, until such instalments have been paid, be deemed to belong to him.

(1) Notwithstanding the provisions of any law but subject to the provisions of this section, an undertaker may break up any street within its area of supply, and may erect posts and lay or construct pipe lines or power lines along, under or over any such street, and from time to time repair, alter or remove any such posts or lines so erected, laid or constructed: Provided that the authority or person having the control of such street shall have a prior right to break up and repair such street with reasonable despatch at payment to him of a reasonable charge by the undertaker.

(2) An undertaker shall, not less than 30 days before exercising any power conferred upon him by this section, give notice in writing to the authority or person concerned of his intention to do so, except in a case of emergency, and in such case he shall give such notice as soon as possible after the emergency has arisen.

(3) The powers conferred upon an undertaker by this section shall, except in a case of emergency, be exercised only under the superintendence of the authority or person concerned and according to a plan showing the route and in terms of specifications approved by that authority or person, or, if any dispute arises in respect of such plan, route or specifications, as may be approved by the regulator: Provided that if the said authority or person fails to exercise the powers of superintendent herein conferred after notice as aforesaid has been given, the undertaker may exercise those powers without such superintendence.

[Sub-s. (3) amended by s. 10 of Act 46 of 1994.]

(4) Whenever an undertaker carries out any work authorized by this section, he shall comply with the by-laws (if any) of the authority or person concerned and shall complete that work with reasonable despatch and reinstate the street broken up and remove the rubbish occasioned thereby and shall, while the street is broken up or obstructed, cause the works to be at all times fenced and guarded and, during the night, adequately lit.

(5) If an undertaker fails to carry out any work referred to in subsection (4), the said authority or person may cause any work not carried out, or unreasonably delayed, to be executed at the expense of the said undertaker.

(6) An undertaker shall pay to the said authority or person the costs reasonably and necessarily incurred by such authority or person in exercising any superintendence under this section.

(7) Nothing in this section contained shall be construed as relieving an undertaker from any liability in respect of any loss or damage caused by his negligence in carrying out such work or by his failure to comply with the provisions of this section.

(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 authority or person.

[a41y1987s26]26      Liability of undertaker for damage or injury

In any civil proceedings against an undertaker arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated or transmitted by or leaking from the plant or machinery of any undertaker, such damage or injury shall be presumed to have been caused by the negligence of the undertaker, unless the contrary is proved.

[a41y1987s27]27      Offences and penalties

(1) If any person carries on an undertaking in contravention of any provision of this Act or of the conditions of his licence or if any undertaker fails to carry out a directive of the Minister under section 15 (2), or any order or decision of the regulator, or fails to comply with any condition imposed by the regulator, he shall be guilty of an offence and liable on conviction to a fine not exceeding the amount which the Minister may from time to time prescribe by regulation for each day on which the undertaking is so carried on or the failure continues.

[Sub-s. (1) amended by s. 10 of Act 46 of 1994.]

(2) Any person who without legal right (the proof of which shall be upon him) abstracts, branches off or diverts or causes to be abstracted, branched off or diverted any electric current, or consumes or uses any such current which has been wrongfully or unlawfully abstracted, branched off or diverted, knowing it to have been wrongfully or unlawfully abstracted, branched off or diverted, shall be guilty of an offence and liable on conviction to the penalties which may be imposed for theft.

(3) Any person who without legal right (the proof of which shall be upon him) cuts off or damages or interferes with any apparatus for generating, transmitting or supplying electricity, shall be guilty of an offence and liable on conviction to a fine not exceeding the amount which the Minister may from time to time prescribe by regulation or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

[a41y1987s28]28      Regulations

(1) The Minister may make regulations relating to-

(a) the form and manner in which any application for a licence or amendment thereof or objection thereto shall be made and the fees payable in respect of any such application;

(b) the conditions, other than such conditions as are mentioned in this Act, which may be attached to the grant of licences;

(c) the duties and obligations of undertakers;

(d) the procedure to be adopted by a licensee requiring rights of way or water rights in connection with his undertaking;

(e) the protection of the public from damage owing to the exercise of rights granted under this Act;

(f) the inspection of and enquiry into the control and operation of undertakings;

(g) the 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 and limits of error;

(h) the frequency, type of current and pressure of electricity generated or supplied;

(i) the mode of supplying electricity;

(j) the procedure at and quorums for meetings of the regulator;

[Para. (j) amended by s. 10 of Act 46 of 1994.]

(k) the method of noting and conducting appeals from decisions of the regulator;

[Para. (k) amended by s. 10 of Act 46 of 1994.]

(l) the considerations which shall guide a water court in granting an application or awarding compensation under section 18;

(m) the obligation of an undertaker to supply electricity to a consumer and the circumstances under which the obligation will be deemed to have been waived;

(n) the conditions on which electricity supplied to premises may be resold to another person;

(o) the fines for offences referred to in sections 22 and 27;

(p) .....

[Para. (p) amended by s. 10 of Act 46 of 1994 and deleted by s. 4 of Act 60 of 1995.]



(q) anything which may or shall be prescribed by regulation in terms of this Act,

and generally for the better carrying out of the objects and purposes of this Act, the generality of this provision not being limited by the provisions of the preceding paragraphs.

(2) Notwithstanding the provisions of subsection (1) and after the State President has declared a state of emergency under the Public Safety Act, 1953 (Act 3 of 1953), the Minister may make regulations which extend, restrict, control or prohibit the supply of electricity, including the supply of coal or other fuel and water, in order to ensure the continued generation of electricity.

(3) Regulations made under subsection (1) or (2), may prescribe penalties for any contravention thereof or failure to comply therewith or with any condition of a licence, of a fine not exceeding the amount which the Minister may from time to time determine or imprisonment for a period not exceeding five years or both such fine and such imprisonment.

[a41y1987s29]29 Delegation of powers

(1) The regulator may by resolution and with the approval of the Minister delegate any power vested in it by this Act, to the chairman or any member or any employee of the regulator.

(2) No delegation of a power in terms of subsection (1) shall preclude the exercise of such power by the regulator itself.

(3) The regulator may by resolution, and the Minister may by written notice to the regulator, at any time amend or cancel a delegation made in terms of subsection (1).

[S. 29 amended by s. 10 of Act 46 of 1994.]

[a41y1987s30]30 .....

[S. 30 repealed by s. 9 of Act 46 of 1994.]

[a41y1987s31]31 Repeal of laws, and savings

(1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of that Schedule.

(2) At the commencement of this Act-

(a) anything done in terms of the provisions of the Electricity Act, 1958, prior to such commencement and which could have been done in terms of the provisions of this Act, shall be deemed to have been done in terms of the latter provisions;

(b) permits and permissions issued by the Electricity Control Board in terms of the provisions of the Electricity Act, 1958, prior to such commencement shall be deemed to be licences granted by the regulator in terms of the provisions of this Act.

[Par. (b) amended by s. 10 of Act 46 of 1994.]

[a41y1987s32]32 Short title and commencement

This Act shall be called the Electricity Act, 1987, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

Schedule

LAWS REPEALED

(Section 31)

No. and year of law	Extent of repeal	Short title
Act 40 of 1958	Electricity Act, 1958	The whole
Act 9 of 1962	Electricity Amendment Act, 1962	The whole
Act 33 of 1963	Electricity Amendment Act, 1963	The whole
Act 10 of 1964	Electricity Amendment Act, 1964	The whole
Act 70 of 1964	Electricity Further Amendment Act, 1964	The whole
Act 4 of 1968	Electricity Amendment Act, 1968	The whole
Act 49 of 1971	Electricity Amendment Act, 1971	The whole
Act 60 of 1974	Electricity Amendment Act, 1974	The whole
Act 63 of 1975	Expropriation Act, 1975	Section 42
Act 21 of 1976	Electricity Amendment Act, 1976	The whole
Act 102 of 1977	Electricity Amendment Act, 1977	The whole
Act 117 of 1979	Electricity Amendment Act, 1979	The whole
Act 21 of 1980	Finance Act, 1980	Section 4
Act 85 of 1980	Electricity Amendment Act, 1980	The whole
Act 58 of 1982	Electricity Amendment Act, 1982	The whole
Act 50 of 1985	Electricity Amendment Act, 1985	The whole
Act 54 of 1986	Electricity Amendment Act, 1986	The whole