

OFFICE OF THE PRESIDENT

No. 2121 9 December 1994

NO. 46 OF 1994: ELECTRICITY AMENDMENT ACT, 1994.

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

General Explanatory Note:

Words in ***bold italic*** indicate omissions from existing enactments.

Words in *italic* indicate insertions in existing enactments.

ACT

To amend the Electricity Act, 1987, so as to delete or substitute certain definitions; to provide for the continued existence of the Electricity Control Board as the National Electricity Regulator; to apply certain provisions of the Act to other institutions and bodies; and to provide for matters connected therewith.

(Afrikaans text signed by the President. (Assented to 25 November 1994.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 41 of 1987

1. Section 1 of the Electricity Act, 1987 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the deletion of the definition of "board";

(b) by the substitution for the definition of "local authority" of the following definition:

" '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 No. 209 of 1993) section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961), and also*

(a) a board of management or board referred to in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);

(b) any local government body established by virtue of the provisions of section 30(2)(a) of the Black Administration Act, 1927 (Act No. 38 of 1927);

(c) a local authority as defined in the Black Local Authorities Act, 1982 (Act No. 102 of 1982);";

(c) by the substitution for the definition of "Minister" of the following definition: " 'Minister' means the Minister of *Economic Mineral and En-ergy Affairs and Technology*";"; and

(d) by the insertion after the definition of "regulation" of the following definition: " 'regulator' means the National Electricity Regulator referred to in section 2;"

Substitution of section 2 of Act 41 of 1987

2. The following section is hereby substituted for section 2 of the principal Act: "National Electricity Regulator

2. The Electricity Control Board referred to in section 22 of the Electricity Act, 1958 (Act No. 40 of 1958), shall continue to exist *notwithstanding the repeal of that Act by section 31* as the 'National Electricity Regulator'."

Amendment of section 4 of Act 41 of 1987

3. Section 4 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 5 of Act 41 of 1987

4. Section 5 of the principal Act is hereby amended by the deletion of subsection (2).

Substitution of section 6 of Act 41 of 1987, as amended by section 2 of Act 58 of 1989 and section 47 of Act 108 of 1991

5. The following section is hereby substituted for section 6 of the principal Act: "Undertakings to be carried on under licence

6. (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 -

(a) any department of State;

(b) the government of a self-governing territory as defined in section 38(1) of the National States Constitution Act, 1971 (Act No. 21 of 1971), supplying electricity obtained from an undertaker to other persons within that self-governing territory;

(c) any local authority within its area of jurisdiction;

(d) any regional services council, for the purposes of the supply of electricity-

(i) within the area of jurisdiction of a local authority; and

(ii) within any area in respect of which the board has granted a licence to a local authority, in respect of which area of jurisdiction or area the powers and duties, or any part thereof, in regard to the supply of electricity are entrusted to such regional services council, but subject to the conditions of any licence referred to in subparagraph (ii);

(e) Eskom; or

(f) any person, *excluding a local authority*, who does not sell more than five gigawatt hours of electricity per annum.

(2) The *board 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 *who* or class of undertaker ****which has not already been exempted in terms of the proviso to that subsection**: Provided that the *board regulator* may at any time with the approval of the Minister withdraw any exemption so granted in whole or in part."

Amendment of section 12 of Act 41 of 1987

6. Section 12 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

(b) the *board regulator* may recommend to the Minister to authorize ***Eskom*** *an appropriate undertaker* in writing to enter upon and take possession of the undertaking of the licensee, and ***Eskom*** *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;"

(b) by the substitution for subsection (2) of the following subsection: "(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 ***Eskom*** *such undertaker* in respect of the services so rendered by it in operating the undertaking;

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

(c) ***Eskom*** *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."; and

(c) by the substitution for subsection (4) of the following subsection: "(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 ***Eskom*** *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. "

Amendment of section 14 of Act 41 of 1987

7. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: "(1) At the taking into possession of an undertaking in terms of section 12 or the takeover of assets in terms of section 13, ***Eskom*** *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."

Amendment of section 15 of Act 41 of 1987

8. Section 15 of the principal Act is hereby amended by the substitution for the proviso to subsection (2) of the following proviso: "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) **(ii) and (iv)** of the Regional Services Councils Act, 1985 (Act No. 109 of 1985).".

Repeal of section 30 of Act 41 of 1987

9. Section 30 of the principal Act is hereby repealed.

Amendment of Act 41 of 1987

10. The principal Act is hereby amended by the substitution for the word "board", wherever it appears, of the word "regulator".

Savings

11. (1) Upon the commencement of this Act-

(a) any licence granted under the provisions of the principal Act prior to such commencement shall be deemed to be a temporary licence issued by the National Electricity Regulator referred to in section 2 of this Act;

(b) any undertaker not in possession of a licence contemplated in paragraph (a) shall, whether such undertaker is exempted from the requirement to hold such a licence or not, be deemed to be the holder of such a licence.

(2) Notwithstanding anything to the contrary contained in the principal Act-

(a) any licence contemplated in subsection (1)(a) shall be deemed to be subject to the conditions under which it was issued prior to the commencement of this Act;

(b) any licence contemplated in subsection (1) (a) or (b) shall be deemed to incorporate the schedule of standard prices applied by the undertaker concerned;

(c) any licence contemplated in subsection (1)(a) or (b) shall be valid for a maximum period of six months from the date of commencement of this Act: Provided that such a licence shall lapse three months after the date of commencement of this Act if the undertaker concerned has not, within that time, applied for a new licence under the provisions of the principal Act.

Short title and commencement

12. This Act shall be called the *Electricity Amendment Act, 1994*, and shall come into operation on a date fixed by the President by proclamation in the Gazette.
