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GENERAL NOTICE

Minerals and Energy, Department of

General Notice

1339 Draft Regulations for the Licensing and Registration of Electricity Generation, Transmission Distribution and Trading:
For comments.....

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GENERAL NOTICE

NOTICE 1339 OF 2006

Draft Regulations for the Licensing and Registration of Electricity Generation, Transmission, Distribution and Trading

1. I, Buyelwa Sonjica, Minister of Minerals and Energy, hereby invite comments to be submitted to the Department of Minerals and Energy on the Regulations for the Licensing and Registration of Electricity Generation, Transmission, Distribution and Trading
2. Comments must be in writing.
3. Comments can be hand-delivered, posted, and facsimiled or e-mailed to the Department.
4. Physical address: Department of Minerals and Energy
Mineralia Centre
234 Visagie Street (c/o Andries and Visagie Streets) Pretoria
(For attention Mr. Aphane, Room D414)
5. Postal Address: Department of Minerals and Energy
Private Bag X 59
Pretoria
0001
(For attention Mr. L.F. Aphane)
6. Facsimile Number: (012) 317 8539 (For attention Mr. L.F. Aphane)

7. E-mail address: lambona.aphane@dme.gov.za
8. Comments must be submitted to the Department of Minerals and Energy not later than 16H30 on the 06 October 2006.

Ms B P Sonjica

Minister of Minerals and Energy

DRAFT REGULATIONS FOR THE LICENSING AND REGISTRATION OF ELECTRICITY GENERATION, TRANSMISSION, DISTRIBUTION AND TRADING

Draft regulations for public comment

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CHAPTER 1

TITLE

Electricity Regulation Act no 4 of 2006 – Regulations for Licensing and Registration of Electricity

DEFINITIONS

In this Schedule any word or expression to which meaning has been assigned in the Act shall have that meaning unless the context indicates otherwise –

“**The Act**” means the Electricity Regulation Act no 4 of 2006

“**Non-Grid**” means the solar system or panels installed to power one household.

“**Mini-Grid**” or “**Off Grid**” means the distribution network not linked to the grid.

“**Household**” means dwellings within the same yard. This excludes farms.

“**Yard**” means a compound encompassing one dwelling.

“**Minister**” means the Minister of the Department of Minerals and Energy

“**The Regulator**” means the National Energy Regulator of South Africa (NERSA)

CHAPTER 2**ACTIVITIES TO BE LICENSED**

In terms of section 47(4)(a), the Minister may by notice in the Gazette make regulations regarding activities that have to be licensed or registered and the classification of licences into categories and sub-categories

1. GENERATION

- (1) All activities generating electricity for commercial purposes need to be licensed
- (2) Where the generation capacity is over 5 giga Watts per annum, then the generation activity needs to be licensed.
- (3) In terms of section 47(3)(f) of the Act, an application for a generation licence must be in accordance with the regulator's rules with regard to the form and manner of applying for a licence.
- (4) In terms of section 47(3)(z) the Regulator may prescribe any other conditions to the licence
- (5) Where a registered plant is requested to supply electricity to the national grid for a commercial return, the regulator may set different licensing conditions for that plant.
- (6) The Regulator must inform the Minister of an application for a new generation licence in writing, before the application is considered. The report should include:
 - a. The energy source for the generation plant;
 - b. The geographical area where the plant is going to be situated;
 - c. The expected generation capacity of the plant;
 - d. The expected lifespan of the generation plant; and
 - e. Confirmation that the generator complies with the national government's electricity policy framework and the integrated resource plan.

2. TRANSMISSION

- (1) In terms of section 47(3)(f) of the Act, an application for a transmission licence must be in accordance with the Regulator's rules with regard to the form and manner of applying for a licence.

3. DISTRIBUTION NETWORK

- (1) All activities pertaining to the distribution of electricity for a commercial return from 132 kV and below must be licensed unless exempted by the Regulator.
- (2) In terms of section 47(3)(f) of the Act, an application for a distribution licence must be in accordance with the Regulator's rules with regard to the form and manner of applying for a licence.

4. ELECTRICITY TRADING

- (1) All trading activities where there is a commercial return for the sole supply of electricity as a product requires a trading licence. The supply includes but is not limited to the following activities:
 - (a) Trading in electricity for a commercial return, including using an off-grid network;
 - (b) The import of electricity; and
 - (c) The export of electricity.
- (2) In the case of the application for an activity referred to in sub-regulation (1)(b), the regulator must inform the Minister of such an application. The notice must include:
 - a) The name of the applicant;
 - b) The name of the electricity supplier;
 - c) The tariffs to be paid by the applicant; and
 - d) The power (Watts) to be imported.
- (3) In the case of the application for an activity referred to in sub-regulation (1)(c), the regulator must inform the Minister of such an application. The notice must include:
 - a) The name of the applicant;
 - b) The name of the country and client to be supplied with the electricity;
 - c) The tariffs to be charged by the applicant; and
 - d) The power (Watts) to be exported.

5. REJECTION OF A LICENCE ON APPLICATION

In terms of section 18 (3) the Minister must prescribe the form and the procedure to be followed in rejecting a licence application. The Act empowers the Regulator to revoke a licence on application. This could be a new licence application or renewal of an expired licence. The regulator may revoke such licence on condition that:

The applicant did not comply with all the requirement of applying for a licence as prescribed by the Regulator;

The activity being applied for is no longer needed; and

The application is outside the parameters of the law.

In rejecting the licence, the Regulator must provide the reason to the applicant for doing so in writing. The applicant may appeal the decision of the Regulator through the applicable mechanism. The onus lies with the applicant to produce evidence supporting such an appeal.

CHAPTER 3

ACTIVITIES TO BE REGISTERED

In terms of section 10 and schedule 2 of the Act, the following activities are exempted from an obligation to apply for and hold a licence:

6. A GENERATION PLANT FOR DEMONSTRATION PURPOSES

- (1) Where the installed generation capacity is less than 200 mega Watt, the plant needs to be registered with the Regulator.
- (2) In terms of section 10 (2) of the Act any person who has to register with the Regulator must do so in the form and in accordance with the prescribed procedure.
- (3) A generation plant constructed for demonstration purposes should be able to meet the licensing criteria for a generation licence if it is to be linked to the National Grid.

7. A GENERATION PLANT CONSTRUCTED AND OPERATED FOR OWN USE

- (1) In terms of section 10(2) of the Act, any person who has to register with the regulator must do so in the form and in accordance with the prescribed procedure.
- (2) A generation plant constructed and operated for own use must be registered with the Regulator, and where such a plant is capable of supporting the National Grid, the plant should be able to meet the licensing criteria for a generation licence.

8. NON-GRID CONNECTED SUPPLY OF ELECTRICITY

- (1) All activities for off-grid distribution of electricity for non commercial purposes need to be registered.
- (2) In terms of section 10(2) of the Act, any person who has to register with the Regulator must do so in the form and in accordance with the prescribed procedure.

9. HOUSEHOLD SUPPLIES

- (1) All activities where the supply of electricity is for commercial return need to be registered.
- (2) In terms of section 10(3) b of the Act, the Regulator may refuse to register such a person or activity if the application is contrary to the objectives of this Act. The grounds for refusal include but are not limited to:
 - a. The connections to the meter that are deemed to be outside of the regulator's safety specifications

- b. The connections to the meter are in such a manner that they present a hazard to the public
 - c. The connections to the meter are deemed to be illegal.
- (3) In terms of section 10(2) of the Act, any person who has to register with the Regulator must do so in the form and in accordance with the prescribed procedure.

10. BUSINESS SUPPLIES

- (1) All activities where the supply of electricity is for commercial return need to be registered.
- (2) The registration of all meters supplying more than one business entity must be in accordance with the Regulator's specifications.

CHAPTER 4

EXPROPRIATION OF LAND

In terms of section 27(2) of the Act, the Minister must prescribe the procedure to be followed in the expropriation of land by the state on behalf of the licensee.

11. PROCEDURE TO BE FOLLOWED IN THE EXPROPRIATION OF LAND

- 1) Notwithstanding anything to the contrary contained in any law, the Minister may, on behalf of a licensee and subject to conditions as the Minister may impose, acquire land or any such rights, by expropriation, over or in respect of land as such licensee may require for the exercise of its powers.
- 2) The Minister shall grant such approval only if satisfied, after considering a report and recommendation by the Regulator –
 - a) That the licensee 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 licensee for the exercise of the powers referred to in subsection (1):
- 3) Before furnishing its report and recommendations under subsection (2), the Regulator shall at a hearing held between the licensee and landowner determine whether such licensee is unable to acquire such land or right on reasonable terms, other than terms relating to compensation, by agreement with the landowner and whether the land or right in question is so required by such licensee.
 - a) The Regulator shall give at least 21 days' notice of the hearing to such licensee and to the landowner concerned, who shall be entitled at such a hearing to raise his objections against the expropriation.

- b) The Regulator shall notify the said landowner and licensee of its findings and recommendations submitted to the Minister within 30 days after the conclusion of the hearing.
- c) The Minister shall furnish his final approval within a period of 30 days after receiving the report and recommendations from the Regulator.

Note: " Minister" in chapter 4 means the Minister of Public Works

CHAPTER 5

TRANSITIONAL ARRANGEMENTS

In terms of section 48(3) licenses that were issued in terms of the Electricity Act of 1987, or that are deemed to have been issued in terms thereof prior to the commencement of this Act, continue in force as if they had been issued in terms of this Act.

12. ACTIVITIES WHERE TRANSITIONAL ARRANGEMENTS APPLY

- (1) All existing activities that need to be registered have one year from the date of promulgation of the Act to register those activities
- (2) Activities that are required to be licensed in terms of the new law have a year from the date of promulgation of this act to apply for these licenses