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GOVERNMENT NOTICE

DEPARTMENT OF MINERALS AND ENERGY

No. R. 879

22 August 2008

ELECTRICITY REGULATION ACT, 2006

ELECTRICITY REGULATIONS FOR EXPROPRIATION ON BEHALF OF A LICENSEE

After consultation with the stakeholders, the Minister of Minerals and Energy has, under section 27(2) of the Electricity Regulation Act, 2006 (Act No 4 of 2006), made the regulations in the Schedule.

SCHEDULE

1. Definitions. – In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates –

"deliver" in relation to any document or notice in these Regulations, means to deliver in accordance with regulation 3;

"owner" means –

- (a) in relation to land or a registered right in, over or in respect of land, the person in whose name such land or right is registered, and –
 - (i) if the owner thereof is deceased, the executor in his or her estate;
 - (ii) if the estate of the owner thereof has been sequestrated, the trustee of his or her insolvent estate;
 - (iii) if any such land or a registered right in, over or in respect of land has vested in a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), read with the Agricultural Debt Management Act, 2001 (Act No. 45 of 2001), that liquidator or trustee;
 - (iv) if the owner thereof is otherwise in any manner not provided for in this paragraph, under a legal disability, his or her legal representative;
 - (v) if any land or registered right in, over or in respect of land has been attached in terms of an order of court, includes the sheriff and deputy-sheriff, as the case may be;

- (vi) includes the authorised representative of the owner in the Republic;
and
 - (vii) in the case of a public place or road under the control of a municipality, that municipality; and
- (b) in relation to an unregistered right in, over or in respect of land, the holder thereof;

"the Act" means the Electricity Regulation Act, 2006 (Act No. 4 of 2006); and

"the Constitution" means the Constitution of the Republic of South Africa, 1996.

2. Procedure to be followed by the licensee. –

- (1) Any licensee who requires the State to expropriate land on its behalf, or any right in, over or in respect of land as contemplated in section 27(1) of the Act, must after having complied with subregulations (3) and (4), apply in writing to the Minister of Public Works to do so in the manner prescribed in subregulations (2) and (6).
- (2) The application contemplated in subregulation (1) must contain the following:
 - (a) A full description of the land or right in, over or in respect of land to be expropriated on behalf of the licensee;
 - (b) the reasons and motivation why the licensee reasonably requires the said land or right in, over or in respect of land with a full description of the facilities for or in connection with which the said land or right in, over or in respect of land is so required by the licensee;
 - (c) full reasons why the said facilities will enhance the electricity infrastructure in the national interest;
 - (d) a full motivation why the requested expropriation will be in the public interest as contemplated by section 25(2) of the Constitution;

- (e) the full name and address of the owner;
 - (f) the history of negotiation between the licensee, the owner and holders of unregistered rights in the said land for the acquisition of the land or the right in, over or in respect of land as well as the reasons why the licensee is unable to acquire such land or right in land by agreement with the said owner and holders of unregistered rights in the said land;
 - (g) the names and addresses of all persons whose unregistered rights in the said land will be affected by the proposed expropriation of whom the licensee is aware;
 - (h) the practical alternatives which are open to the licensee if such land or the right in, over or in respect of land is not expropriated;
 - (i) any other fact which the licensee may deem relevant to the application; and
 - (j) a written statement whether the licensee is willing to hold the State harmless in respect of all costs to be incurred by the State in connection with the requested expropriation and if so, the way in which the licensee intends doing so.
- (3) Before lodging an application contemplated in subsection (1) with the Minister of Public Works, the licensee –
- (a) must publish a notice of intention to apply for the said expropriation in English and in another official language commonly used in the area where the land is situated, once in the *Government Gazette* and simultaneously therewith or not more than one week thereafter, once in the said languages in two newspapers of different languages circulating in the area in which the property is situated, which notice must contain –

- (i) a notification that the licensee intends to apply to the Minister of Public Works for the expropriation of the said land or right in, over or in respect of land;
 - (ii) a full description of the land or right in, over or in respect of land to which the application will apply and how the expropriation will affect the said land or existing rights in, over or in respect thereof;
 - (iii) a short description of the scheme for which the expropriation is intended and the address at which the application may be inspected and particulars thereof may be obtained during business hours;
 - (iv) an invitation to any interested party to deliver to the licensee at a given address and by not later than a given date (which must be at least 21 days after the last publication of the said notice) in writing any objections against the said application or any submissions relating thereto; and
 - (v) a statement notifying persons who may be affected by the expropriation applied for, of their right of review of a decision to expropriate taken by the Minister of Public Works in terms of section 27 of the Act, as set out in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- (b) must deliver to the owner –
- (i) a copy of the application;
 - (ii) a copy of the notice contemplated in subregulation (a); and
 - (iii) a copy of these Regulations;
- (c) must deliver to the Regional Land Claims Commissioner in whose area the land is situated and the Director General: Land Affairs, a copy of the

application and of the notice contemplated in subregulation (a), both of whom may comment in writing on the said application by not later than 21 days from delivery of the said documents, informing the licensee of any land claim and any unregistered rights derived from or protected by any law under the administration of such Regional Land Claims Commissioner or of the Minister of Land Affairs, to the extent that such claim or unregistered rights will be affected by the expropriation applied for and to the extent that they may be aware of such claim or such unregistered rights; and

(d) may in addition advertise its intention to apply for the said expropriation in such languages as it deems appropriate on television or by radio, transmitting to the area where the property is situated and, in doing so, convey the information set out in subregulation (a).

- (4) The owner must deliver his or her reply to an application, if any, within 21 days after receipt of the said documents, to the licensee at the address appointed in the said notice.
- (5) The licensee may extend any of the time periods in subregulations (3)(a)(iv), 3(c) and (4) in writing for a period of 21 days and must do so if requested in writing before the expiry of the relevant period.
- (6) The original application must be delivered by the licensee to the Minister of Public Works after the expiry of all time periods or extended time periods, accompanied by proof of the advertisements contemplated in subsection 3(a) and of delivery of the documentation contemplated in subsection 3(b), as well as –

(a) objections and comments;

(b) information supplied to the licensee by the Regional Land Claims Commissioner and the Director-General: Land Affairs; and

(c) the reply of the owner to the application;

if any, received by the licensee within the time periods or extended time periods set therefore, and the licensee may include such comment or reply as it may deem necessary to such objections, comments, information and the reply of the owner.

- (7) The licensee must deliver a copy of the application and accompanying documents contemplated in subregulation (6) to the Minister within seven days of the delivery of the application to the Minister of Public Works and the Minister may within 21 days of the delivery thereof, or such extended period as the Minister may, in his or her discretion, allow, comment upon the said application and documents to the Minister of Public Works.

3. Delivery and language used in documents. –

- (1) Whenever a document must be delivered in terms of these Regulations, the delivery must take place at the last-known address of the addressee or at an address appointed by the addressee –
- (a) by hand delivery; or
- (b) by facsimile transmission or electronic means to a number or electronic address furnished by the addressee: Provided that a confirmatory copy of the document is sent by ordinary mail or by other suitable method within one day of such facsimile or electronic transmission; or
- (c) by prepaid registered post.
- (2) Whenever a document or a part of a document which is in colour has to be delivered, every copy thereof which is delivered and in the case of a facsimile or electronic transmission, the confirmatory copy must be in the same colour as the original.
- (3) All documents must be in English and other official language that may be requested in writing by the addressee.

(4) An address, including a facsimile number or electronic address, if any, where delivery of further documentation or notices may take place, must be supplied by every person or official who reacts to –

(a) the notice contemplated in regulation 2(3); and

(b) the application.

No. R. 879**22 August 2008****UMYANGO WEZAMANDLA NOKUMBIWA PHANSI****UMTHETHO WOKULAWULWA KUKAGESI WEZI-2006****IMITHETHO KAGESI YOKUTHATHWA KWEMPAHLA EGAMENI LONEMVUME**

Ngemuva kokuxhumana noMlawuli kaGesi kaZwelonke, uNgqongqoshe wezaMandla nokuMbiwa Phansi, ngaphansi kwesahluko sama-47(4) esifundwa kanye nesahluko sama-27(2) soMthetho wokuLawulwa kukaGesi ka-2006 (uMthetho wesi-4 ka-2006), wenze imithetho ekule Sheduli.

ISHEDULI

1. Izincazelo. – Kule Mithetho igama nanoma iliphi noma okushiwoyo okunikezwe incazelo kulo Mthetho kuzoba nencazelo enikiwe ngaphandle uma ingqikithi ikhombisa okunye–

"ukwethula" mayelana nanoma yimuphi umbhalo noma isaziso kule Mithetho, kusho ukwethula ngokuhambisana nomthetho wesi-3;

"umnikazi" uchaza –

(c) Maqondana nomhlaba noma ilungelo elibhalisiwe lomhlaba, phezu komhlaba noma mayelana nomhlaba, umuntu ogama lakha umhlaba ubhaliswe ngalo noma onelungelo lawo, futhi–

- (i) uma umnikazi womhlaba esashona, obheke impahla yakhe;
- (ii) uma umninimpahla ubekade emukiwe impahla, onelungelo lungelo lokumphathela impahla yakhe ekolodayo.
- (iii) uma noma ngabe imuphi umhlaba ofana nalo noma ilungelo elibhalisiwe lomhlaba, phezu komhlaba noma mayelana nomhlaba lunikwe umkhokhi zikweletu noma kumgcinimafa okhethiwe noma oqokiwe ngokoMthetho weziKweletu zezoLimo ka-1966 (uMthetho wama-28 ka-1966) ofundwa noMthetho wokuPhathwa kweZikweletu zezoLimo ka-2001 (uMthetho wama-45 ka-2001), yena lowo mkhokhizikweletu noma yena lowo mgcinimafa;
- (iv) uma umninimpahla nganoma iyiphi indlela engahlinzekeliwe kule ngxenye, ngaphansi kokuba nokulimala okusemthethweni, ommele osemthethweni; enganalo ulwazi maqondana nalesi sigaba kufanele alekelwe ummeli wakhe
- (v) noma imuphi umhlaba noma ilungelo elibhaliswe lomhlaba phezu komhlaba noma maqondana nomhlaba odliwe ngokomyalo

wenkantolo, umbandakanya isikhonzi senkantolo kanye nephini lesikhonzi senkantolo, njengobva kunokwenzeka;

(vi) umbandakanya omele womnikazi womhlaba ogunyaziwe eRiphabhuliki; kanye

(vii) esimeni sendawo yomphakathi noma umgwaqo olawulwa umasipala, lowo masipala; futhi

(d) maqondana nelungelo lomnikazi womhlaba elingabhalisiwe;

"uMthetho" uchaza uMthetho wokuLawulwa kukaGesi ka-2006 (uMthetho wesi-4 ka-2006); kanye

"uMthethosisekelo" uchaza uMthethosisekelo waseRiphabhlikhi yaseNingizimu Afrika we-1996.

2. Inqubo okufanele ilandelwe ngonemvume. – (1) Noma ubani onemvume odinga uHulumeni kazwelonke ukuba athathe umhlaba egameni lanoma iliphi ilungelo lomhlaba, phezu komhlaba noma maqondana nomhlaba njengoba kucatshangwa kwisahluko sama-27(1) soMthetho, ngemuva kokuhambisana nomtheshwana wesi-(3) nowesi-(4), kufanele afake isicelo esibhaliwe asiqondise kuNgqongqoshe weMisebenzi kaHulumeni ngendlela enqunywe ngumtheshwana wesi-(2) nowesi-(6).

(8) Isicelo esitholakale esicatshangwa kumtheshwana woku-(1) kufanele sibe nalokhu okulandelayo:

(a) Incazelo ephelele yomhlaba noma ilungelo lomhlaba, phezu komhlaba noma maqondana nomhlaba okufanele uthathwe egameni lonemvume;

(b) Izizathu nokusekela ukuthi kungani onemvume edinga umhlaba noma ilungelo lomhlaba, phezu komhlaba noma maqondana nomhlaba nencazelo ephelele yezinsizakwenza cziqondene nalowo mhlaba noma ilungelo

- lomhlaba, phezu komhlaba noma maqondana nomhlaba udingwa ngonemvume;
- (c) Izizathu eziphelele kungani izinsizakwenza zizothuthukisa inqalasisinda kagesi ukuze kuzuze isizwe;
- (d) ukusekela okuphelele ngokuthi kungani ukuthathwa kwempahla okucelwayo kufanele kuzuze ngakho umphakathi njengoba kutholakala kwisahluko sama-25(2) soMthethosisekelo;
- (e) amagama aphelele nekheli lomnikazi womhlaba
- (f) umlando wezingxoxo phakathi konemvume, umninihlaba nabanamalungelo angabhalisiwe omhlaba ookukhunywa ngawo ukuze utholakale noma kutholakale ilungelo lomhlaba, phezu komhlaba maqondana nomhlaba kanye nezizathu zokuthi kungani onemvume engakwazi ukuthola lowo mhlaba noma ilungelo lomhlaba ngokuvumelana nomnikazimhlaba noma abaphethe amalungelo angabhalisiwe omhlaba lowo;
- (g) amagama namakheli abo bonke abantu abanamalungelo abangabhalisiwe kulowo mhlaba okukhulunywa ngawo abazothinteka ukuthathweni okuhlongozwayo okunguthi onemvume uyabazi;
- (h) izindlela ezibonakalayo ezingenziwa ezivulekile konemvume uma lowo mhlaba noma ilungelo, phezu noma mayelana nomhlaba lingathathwa;
- (i) noma imaphi amanye amaqiniso onemvume angacabanga ukuthi afanele ekufakweni kwesicelo; kanye
- (j) nesitatimende esibhaliwe sokuthi onemvume uzimisele ukungafaki uHulumeni enkingeni yazo zonke izindlelo ezizovela maqondana nesicelo sokuthathwa komhlaba, futhi uma kunjalo indlela onemvumo afuna ukukwenza ngayo lokhu.

(9) Ngaphambi kokufaka isicelo esicatshangwa kwisahlukwana soku-1 noNgqongqoshe weMisebenzi kaHulumeni, onemvume –

(a) kufanele ashicilele isaziso senhloso yokufaka isicelo sokuthathwa komhlaba ngesiNgisi noma ngolunye ulimi olusetshenziswa kakhulu endaweni lapho kukhona lowo mhlaba, futhi uma sesichicilelwe *kwiGazethi kaHulumeni* futhi ngaso lesi sikhathi noma esikhathini esingekho ngaphezu kwesonto elilodwa, uma sesisemaphendabeni amabili atholakala ngezilimi ezihlukene okukhulunywe ngazo ezikhulunywa endaweni lapho leyo mpahla ikhona, enomhlaba, lesi isaziso kufanele sibe nokulandelayo –

(i) ukwazisa ukuthi onemvume ucabanga ukufaka isicelo kuNgqongqoshe weMisebenzi kaHulumeni sokuthathwa umhlaba noma ilungelo lomhlaba eMphakathini;

(ii) incazelo egcwele yomhlaba noma ilungelo lomhlaba, phezu komhlaba noma maqondana nomhlaba lapho ukuthatha kuzosetshenziswa khona kanye nokuthi ukuthathwa komhlaba kuzowuphazamisa kanjani umhlaba okukhulunywa ngawo noma amalungelo akhona omhlaba, phezu komhlaba noma maqondana nawo;

(iii) incazelo emfushane yohlelo okuhloswe ngalo ukuthathwa nekheli lalapho isicelo okufanele sicutshungulwe khona kanye nelalapho imininingwane engatholakala khona ngezikhathi zomisebenzi;

(iv) isimemo sanoma ngubani onothando lokuhambisa izincwadi konemvume ekhelini elibhalwe phansi singakandluli isikhathi esibekwiwe (okufanele kube yizinsuku okungenani ezinga-21 ngemuva kokushicilelwa kwesaziso okukhulunye ngaso) esibhaliwe nanoma yimiphi imibandela engavimbela isicelo noma nanoma ikuphi okuhambisana nesicelo okufanele kufakwe; kanye

- (v) nesitatimende esazisa abantu abangathinteka uma kuthathwa okufakelwe isicelo, ngelungelo labo lokubukezwa kwesinqumo sokuthathwa komhlaba esithathwe nguNgqongqoshe weMisebenzi kaHulumeni ngokoMthetho wesahluko sama-27, njengoba ubekwe kwisahluko sesi-6 soMthetho wokuQhutshekiselwa Phambili uBulungiswa bokuPhatha ka-2000 (uMthetho wesi-3 ka-2000);
- (b) kufanele ahambise kumnikazi mhlaba –
- (i) ikhophi yesicelo;
- (ii) ikhophi yesaziso etholakala kumtheshwana (a); kanye
- (iii) nekhophi yalowo Mthetho;
- (c) kufanele ethule kuKhomishana wesiFunda wokuBuyiselwa koMhlaba walapho umhlaba ukhona noMqondisi Jikelele: kwezeMihlaba, ikopi yesicelo kanye neyesaziso esicatshangwa kumtheshwana (a), bobabili okufanele babhale baphawule abakuphawulayo ngesicelo esifakiwe kungakapheli izinsuku ezinga-21 kombhalo okukhulunywa ngawo, bazise onemvume yomhlaba nganoma isiphi isicelo sokubuyiselwa komhlaba futhi nganoma iliphi ilungelo lomhlaba elingabhalisiwe elisuselwa kulowo mhlaba noma ilungelo elivikelwe nganoma imuphi umthetho ngaphansi kokuphathwa uKhomishana weSifunda wokuBuyiselwa koMhlaba noma uNgqongqoshe weziNdaba zokuPhathwa koMhlaba, kuze kufike lapho lesi sicelo noma ilungelo elingabhalisiwe lizothintwa yisicelo esenziwe sokuthathwa komhlaba futhi kuze kufike lapho bazi khona ngalesi sicelo noma ngaleli lungelo elingabhalisiwe; futhi
- (d) angangeza ngokukhangisa inhloso yokufaka isicelo sokudliwa komhlaba ngezilimi ezibonakala zifanele kumabonakude noma umsakazo osakaza izindaba endaweni lapho umhlaba ukhona futhi ukwenzenjalo kudlulisa ulwazi ngokumiswe kumtheshwana (a).

- (10) Umnikazimhlaba kufanele ahambise impendulo yakhe ngesicelo uma ikhona, zingakapheli izinsuku ezinga-21 ngemuva kokuthola leyo mibhalo konemvume ekhelini eliqokwe kusaziso lesa.
- (11) Onemvume angongeza noma isiphi isikhathi esibekwe kumtheshwana wesi-(3)(a)(iv) nowesi-3(c) kanye nowesi-(4)kufanele aknze lokhu ngokuthi abhale incwadi ngaphambi kokuphela kwesikhathi esibekiwe.
- (12) Onemvumo kufanele athule isicelo okuyisonasona kuNgqongqoshe weMisebenzi kaHulumeni ngemuva kokuphela kwesikhathi esibekiwe noma sekuphele isikhathi esengeziwe, siphelzelwa ubufakazi bezikhangisi ozicatshangwa kumtheshwana wesi-3(a) kanye nowokwethulwa kwemibhalo ecatsangwa umtheshwana wesi-3(b), kanye –
- (a) nezikhalo nokuphawula;
- (b) ulwazi olunikezwe onemvume nguKhomishani wesiFunda wokuBuyiselwa Komhlaba noMqondisi Jikelele; kwezeMihlaba; kanye-
- (c) nempendulo yomnikazi womhlaba kulesi sicelo;
- uma ikhona, etholwe onemvumo esikhathini esibekiwe noma esikhathini esengeziwe ngakho-ke, onemvume angafaka umbono noma aphenndule njengoba ngabona kufanle lokho kuphikisa, imibono, ulwazi futhi aphenndule umninimhlaba.
- (13) Onemvume kufanele ahambise ikopi yesicelo nemibhalo eyiphelekezelayo ecatsangwa kumtheshwana wesi-(6) kuNgqongqoshe weMisebenzi kaHulumeni zingakapheli izinsuku eziyi-7 zokuthola isicelo kukaNgqongqoshe weMisebenzi kaHulumeni futhi noNgqongqoshe asho akushoyo ezinsukwini ezingama-21 incwadi ifikile noma esikhathini esengeziwe uNgqongqoshe, ngokuthanda kwakhe, angavumela, abeke uvo lwakhe ngesicelo esifakiwe nangemibhalo eya kuNgqongqoshe weMisebenzi kaHulumeni.

3. Ukubanjiswa kwezincwadi nolimi olusetshenziswe ezincwadini. – (1) Noma yinini imibhalo kufanele ihanjiswe ngokwale Mithetho, imibhalo kufanele ihanjiswe ekhelini lokungcina elaziwayo lomninincwadi noma ekhelini eliqokwe umninincwadi –

- (c) ihanjiswa ngesandla; noma
 - (d) ihanjiswe ngefeksi noma ngendlela kagesi ekhelini noma emakhelini amaningi anikwe umuntu izincwadi eziqondiswe kuye: Ngaphandle uma incwadi yokuqinisekisa ithunyelwa ngeposi elijwayelekile noma ngenye indlela efanele esikhathini esingusuku olulodwa ezifana nefeksi noma indlela yokudlulisa kagesi; noma
 - (e) Ngeposi elikhokhelwa ngaphambilini;..
- (5) Noma yinini umbhalo noma ingxenye yombhalo onombala ogqamile izolethwa, wonke amakopi afika ngendlela yefekisi noma ngendla yokudlulisa kagesi, ikopi yokuqinisekisa kufanele ibe nombala ofanayo neyokuqala.
- (6) Zonke imibhalo kufanele ibhalwe ngeSingisi nangolunye ulimi olusemthethweni olucelwe ngobhalelwa incwadi.
- (7) Ikheli, limbandakanya inombolo yefeksi noma ikheli lendlela yokudlulisa kagesi, lalapho kuzobanjiswa khona eminye imibhalo noma izaziso, kufanele lifakwe yibo bonke abantu noma abasebenzi –
- (a) isaziso ecatshangwa kumthethonqubo wesi-2(3); kanye
 - (b) nesicelo.
-