



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 710

Cape Town
Kaapstad

20 Augustus 2024

No. 51100

THE PRESIDENCY

No. 5139 20 Augustus 2024

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

Act No. 38 of 2024: Electricity Regulation Amendment Act, 2024

UMONGAMELI

No. 5139 20 August 2024

Kwaziswa ukuthi uMongameli uvumile uMthetho olandelayo oshicilelwa lapha ukuze kwaziwe wonke umuntu:—

No 38 Ka 2024: Umthetho wokuchibiyela ukulawulwa kukagesi, 2024

ISSN 1682-5845



9 771682 584003



5 1 1 0 0



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 16 August 2024)

ACT

To amend the Electricity Regulation Act, 2006, so as to delete, amend, and insert certain definitions; to provide for the application of the Act; to provide for the National Energy Regulator to consider applications for licences and the issue of licences; to provide for revocation and deregistration of licences; to provide for additional electricity, new generation capacity and electricity infrastructure; to provide for the establishment, duties, powers and functions of the Transmission System Operator SOC Ltd and transitional measures; to provide for an open market platform that allows for competitive electricity trading; to assign the duties, powers and functions of the Transmission System Operator SOC Ltd to the National Transmission Company South Africa SOC Ltd; to provide for delegation and assignment; to provide for offences and penalties; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 4 of 2006, as amended by section 1 of Act 28 of 2007

1. Section 1 of the Electricity Regulation Act, 2006 (hereinafter referred to as the “principal Act”), is hereby amended—

- (a) by the insertion before the definition of “chief executive officer” of the following definitions:

“‘**ancillary services**’ means those services necessary to support the continuous and secure operation of an electric power system and necessary to maintain reliable operations of the national transmission power system and interconnected distribution power systems, including, but not limited to, those services necessary for voltage and reactive power control, automatic generation control, frequency control and black start capabilities;

‘**balance responsible**’ means taking physical and financial responsibility for maintaining real-time balancing at specified metering points by submitting forecasts and participating in the energy market;

‘**balance responsible party**’ means a licensed or registered generator, distributor or trader that is responsible for balance responsible activities, and which is accountable through the balancing mechanism for deviations;

‘**balancing mechanism**’ means a mechanism used by the system operator to balance the supply and demand of electricity in real time on the power system by cost effective dispatching of generation and demand resources;

UMBHALO OCHAZA OKUJWAYELEKILE:

[] Amagama akubakaki abayisikwele amele okukhishwe emthethweni osebenzayo.

Amagama adwetshelwe ngomugqa amele okufakiwe emthethweni osebenzayo.

(English text signed by the President)
(Assented to 16 August 2024)

UMTHETHO

Ukuchibiyela uMthetho wokuLawulwa kukaGesi, wezi-2006, ukuze kususwe, kuchitshiyelwe, futhi kufakwe izincazelo ezithile; ukuhlinzekela ukusetshenziswa koMthetho; ukuhlinzekela ukuthi uMlawuli Wamandla Kagesi acubungule izicelo zamalaysense kanye nokukhishwa kwamalaysensi; ukuhlinzekela ukuhoxiswa kanye nokwesulwa kokubhaliswa kwamalaysensi; ukuhlinzekela ugesi owengeziwe, amandla okuphehlwa kabusha kanye nengqalasizinda kagesi; ukuhlinzekela ukusungulwa, imisebenzi, amandla kanye nemisebenzi ye-Transmission System Operator SOC Ltd kanye nezinyathelo zesikhashana; ukuhlinzekela ukuba khona kwenkundla yemakethe evulelekile evumela ukuhwebelana ngogesi ngokuncintisana; nokwabiwa kwemisebenzi, amandla kanye nemisebenzi ye-Transmission System Operator SOC Ltd kwi-National Transmission Company South Africa SOC Ltd; ukuhlinzekela ukudluliswa kwamandla nemisebenzi; ukuhlinzekela amacala kanye nezinhlawulo; kanye nokuhlinzekela izindaba ezihlobene nalokho.

UZOMISWA iPhalamende laseNingizimu Afrika, ngale ndlela elandelayo:—

Ukuchitshiyelwa kwesigaba 1 soMthetho 4 wezi-2006, njengoba uchitshiyelwe isigaba 1 soMthetho 28 wezi-2007

1. Ngakho-ke isigaba soku-1 soMthetho wokuLawulwa kukaGesi, wezi-2006 (kulokhu owaziwa “njengoMthethongqangi”), sichitshiyelwe—

(a) ngokushutheka ngaphambi kwencazelo “uMphathi Omkhulu” le ncazelo elandelayo:

“**‘imisebenzi exhasayo’** kushiwo lezo zinsizakalo ezidingekayo ukuze kusekwe ukusebenza okuqhubekayo nokuvikelekile kohlelo lwamandla kagesi futhi edingekayo ukuze kugcinwe ukusebenza okuthembekile kohlelo lukazwelonke lokudluliswa kwamandla kanye nezinhlelo ezixhumene zokwaba amandla, okuhlanganisa, kodwa kungacini lapho, leyo misebenzi edingekayo yokulawula amandla kagesi kanye namandla asebenzayo, ukulawulwa ukuphehla okuzenzakalelayo, ukulawulwa kwamafrikhwensi namandla okuzibuyela kwagesi; **‘isibophezelo sokubhalansa’** kushiwo ukuthatha umthwalo obonakalayo nowezezimali wokugcina ukulinganisa kwesikhathi sangempela ezindaweni ezishiwo zamamitha ngokuletha izibikezelo kanye nokubamba iqhaza ezimakethe zamandla; **‘inkampani engagcina isibophezelo sokubhalansa’** kushiwo umkhqizi onelayisensi noma obhalisiwe, umabi noma umdayisi onesibopho semisebenzi yokuqinisekisa ukulingana;

- ‘**central purchasing agency**’ means the entity assigned to fulfil the role of the wholesale buyer to maintain system integrity during, and after, the transition to a competitive electricity market;”;
- (b) by the deletion of the definition of “chief executive officer”;
- (c) by the insertion after the definition of “customer” of the following definitions: 5
- “‘**Department**’ means the department responsible for mineral resources and energy;
- ‘**Director-General**’ means the Director-General of the Department;
- ‘**direct supply agreement**’ means an agreement for the sale of electricity between a generation licensee or registrant or trader, acting in its capacity as such, and a customer, whether such electricity is supplied directly or through a transmission power system or a distribution power system, provided that the customer is not a transmitter, distributor or system operator or trader; 10
- ‘**dispatching**’ means the scheduling, coordination and management of the flow of electricity produced by generation facilities into and out of a transmission power system or an interconnected distribution power system, including scheduling, coordinating and managing the start-up and shut-down of those facilities, and ‘dispatch’ has a corresponding meaning;”;
- (d) by the insertion after the definition of “distribution” of the following definition: 15
- “‘**distribution licensee**’ means a holder of a licence to operate a distribution power system;”;
- (e) by the substitution for the definition of “distribution power system” of the following definition: 20
- “‘**distribution power system**’ means a network for the conveyance of electricity which operates at or below a nominal voltage of 132kV but above 11kV;”;
- (f) by the substitution for the definition of “end user” of the following definition: 25
- “‘**end user**’ means a user of electricity [or a service relating to the supply of] who consumes such electricity;”;
- (g) by the insertion after the definition of “generation” of the following definition: 30
- “‘**generation licensee**’ means a holder of a licence to operate a generation facility in terms of section 4(a)(i)(aa);”;
- (h) by the insertion after the definition of “generator” of the following definition: 35
- “‘**independent power producer**’ means any person in which an organ of state does not hold a direct or indirect controlling interest, which undertakes or intends to undertake the development of new generation capacity or the generation of electricity pursuant to a section 34 determination;”;
- (i) by the substitution for the definition of “integrated resource plan” of the following definition: 40
- “‘**integrated resource plan**’ means [a resource] an indicative, forward-looking plan [established by the national sphere of government to give effect to] for electricity generation, which reflects national policy on electricity planning, which plan specifies the types of energy sources and technologies from which electricity may be generated and indicates the amount of electricity that is to be generated from each of such sources or technologies;”;
- (j) by the insertion after the definition of “integrated resource plan” of the following definitions: 45
- “‘**interconnected distribution power system**’ means a distribution power network that is interconnected to a transmission power system; 50
- ‘**legacy independent power producer contract**’ means a power purchase agreement that has been concluded prior to the launch of the competitive electricity market; 55

- futhi enesibopho ngokusebenzisa indlela yokulinganisa yokuchezuka; **'indlela yokulinganisa'** kushiwo indlela esetshenziswa umqhubi wohlelo ukulinganisa ukuphakelwa kanye nesidingo sikagesi ngesikhathi sangempela ohlelweni lukagesi ngokuthumela okungabizi kakhulu kwezinsiza zokuphehla kanye nesidingo; 5
- 'isikhungo esiyinhloko sokuthenga'** kushiwo ibhizinisi elabelwe ukufeza indima yomthengi wezitolo ezinkulu ukugcina ubuqotho bohlelo ngesikhathi, nangemuva, kokushintshela emakethe kagesi ebangisanayo;";
- (b) ngokususa incazelo yegama "uMphathi Omkhulu"; 10
- (c) ngokushutheka emva kwencazelo "umthengi" lezi zincazelo ezilandelayo:
 "uMnyango" kushiwo umnyango obhekele izimbiwa kanye namandla;
"uMqondisi-Jikelele" kushiwo uMqondisi-Jikelele woMnyango;
'isivumelwano sokuphakelwa ngqo' kushiwo isivumelwano sokudayiswa kukagesi phakathi komnikazi welayisensi yokuphehla ugesi noma obhalisiwe noma umdayisi, esebenza njengalokhu, kanye nomthengi, noma ngabe lowo gesi uphakelwa ngokuqondile noma ngohlelo lukagesi oludluliswayo noma uhlelo lokwabiwa kwamandla, inqobo nje uma umthengi engeyena umthumeli, umabi noma umqhubi wohlelo noma umthengisi; 15
'ukuthumela' kushiwo ukuhlela, ukuxhumanisa kanye nokuphathwa kokuhamba kukagesi okhiqizwa izikhungo zokuphehla ugesi ungena noma uphuma ohlelweni lwamandla okudlulisa noma uhlelo lokwabiwa kwamandla oluxhumene, okuhlanganisa ukuhlela, ukuxhumanisa kanye nokuphatha ukuqalisa kanye nokuvalwa kwalezo zikhungo, futhi **'ukuthumela'** kunencazelo efanayo;"; 20
- (d) ngokushutheka emva kwencazelo "ukuthumela" le ncazelo elandelayo:
"umnikazi welayisensi yokwabela" kushiwo umnikazi welayisensi yokusebenzisa uhlelo lokwabiwa kwamandla;"; 25
- (e) ngokufaka esikhundleni sencazelo "uhlelo lokwabiwa kwamandla" le ncazelo elandelayo:
"uhlelo lokwabiwa kwamandla" kushiwo ubuxakaxaka bokudlulisa ugesi obusebenza ngamandla kagesi ayi-132kV noma ngaphansi kodwa ngaphezu kwayi-11kV;"; 30
- (f) ngokufaka esikhundleni sencazelo "umthengi" le ncazelo elandelayo:
"umthengi" kusho umuntu othenga ugesi [noma isevisi ehambisana nokunikezela] osebenzisa ugesi;"; 35
- (g) ngokushutheka emva kwencazelo "ukuphehla" le ncazelo elandelayo:
"umnikazi welayisensi yokuphehla" kushiwo umuntu onelayisensi yokuphatha isikhungo sokuphehla ngokwesigaba sesi-4(a)(i)(aa);"; 40
- (h) ngokushutheka ngemva kwencazelo "ukuphehla" le ncazelo elandelayo:
"umkhiqizi wamandla ozimele" kushiwo noma yimuphi umuntu lapho isikhungo sikahulumeni singenayo intshisekelo yokulawula ngqo noma engaqondile, wenza noma uhlose ukwenza ukuthuthukisa uhlelo olusha lokuphehla amandla kagesi noma ukuphehlwa kwagesi ngokuhambisana nesinqumo sesigaba sama-34;"; 45
- (i) ngokufaka endaweni yencazelo "ipulani lamandla elixhunyanisiwe" le ncazelo elandelayo:
"ipulani lamandla elixhunyanisiwe" kusho [ipulani lamandla] uhlelo olukhombisayo, olubheke phambili [elisungulwe uhulumeni kazwelonke elinomthelela emigomeni kazwelonke] yokuphehla ugesi, ebonisa inqubomgomo kazwelonke yokuhlela ugesi, uhlelo olucacisa izinhlobo zemithombo yamandla nobuchwepheshe ugesi ongaphehlwa ngakho futhi lubonise inani likagesi okufanele uphehlwe kumthombo ngamunye waleyo mithombo noma ubuchwepheshe;"; 50
- (j) ngokushutheka emva kwencazelo "ipulani lamandla elixhunyanisiwe" le ncazelo elandelayo:
"uhlelo lokwabiwa kwamandla oluxhumene" kushiwo inethiwekhi yokwabiwa kwamandla exhumene nohlelo lokudlulisa amandla; 60
'inkontileka yokukhiqizwa kwamandla azimele okuqhubekayo' kuchaza isivumelwano sokuthengwa kwamandla esiphothulwe ngaphambili kokwethulwa kwemakethe kagesi yokuncintisana;
'ilayisensi' kushiwo ilayisensi ekhishwe ngaphansi kwalo Mthetho;

- ‘**licence**’ means a licence issued under this Act;
- ‘**market operator**’ means a person licensed to operate a trading platform for power market participants and who takes no ownership of the energy traded;
- ‘**market transaction**’ means a transaction that occurs in a competitive environment, either on a competitive trading platform or bilaterally;”;
- (k) by the substitution for the definition of “Minister” of the following definition: “‘**Minister**’ means the Minister of [**Minerals**] Mineral Resources and Energy;”;
- (l) by the insertion after the definition of “Minister” of the following definition: “‘**multi-market**’ means a hybrid market model accommodating market transactions, physical bilateral transactions and regulated transactions;”;
- (m) by the insertion after the definition of “National Energy Regulator Act” of the following definitions:
- “‘**national transmission power system**’ means the interconnected transmission power system used for the transmission of electricity produced by generation facilities for purposes of the supply of electricity to customers within and outside South Africa, above 132kV;
- ‘**new generation capacity**’ means additional electricity capacity, including capacity derived from new generation facilities, the expansion of existing facilities, or existing facilities not previously connected to the national transmission power system, or an interconnected distribution power system, other than—
- (a) the capacity of generation facilities for own use;
- (b) the capacity of generation facilities that supply electricity to end users pursuant to direct supply agreements;
- (c) the capacity of generation facilities referred to in item 1 of Schedule 2 to the Act; and
- (d) the capacity of generation facilities for export, which have been approved by the Minister;”;
- (n) by the insertion after the definition of “person” of the following definitions:
- “‘**physical bilateral transaction**’ means a transaction entered into by generators, customers and traders for energy production which involves the conclusion of a power purchase agreement to meet demand and supply as required by the system operator;
- ‘**power market participants**’ means participants that meet the qualifying criteria set, and choose to participate, in the market platform established by the market operator;
- ‘**power purchase agreement**’ means an agreement between a generator and a buyer, for the sale and purchase of electricity or electricity generation capacity;”;
- (o) by the substitution of the definition of “price” of the following definition: “‘**price**’ means a charge for electricity to an end-user or customer reflecting the cost to serve that end-user or customer and may include a tariff determined by the Regulator, and a surcharge, tax, levy or duty imposed by a municipality in terms of section 229 of the Constitution of the Republic of South Africa, 1996;”;
- (p) by the insertion after the definition of “prescribe” of the following definitions:
- “‘**registrant**’ means a person registered with the Regulator in terms of section 9;
- ‘**regulated transaction**’ means a transaction that requires regulatory approval or oversight, specifically where the exercise of market power is likely or evident (for example, network charges);”;

- ‘umqhubi wemakethe’** kushiwo umuntu onelayisensi yokuqhuba inkundla yokuhweba kubabambiqhaza bemakethe kagesi futhi abangawenzi awabo amandla okuhwebwe ngawo;
- ‘ukuthengiselana kwemakethe’** kusho ukuthengiselana okwenzeka endaweni yokuncintisana, kungaba endaweni yokuncintisana yohwebo noma ngokuhlanganyela;”;
- (k) ngokufaka endaweni yencazelo “uNgqongqoshe” le ncazelo elandelayo: 5
‘uNgqongqoshe’ kushiwo uNgqongqoshe **[wezokuMbiwa]** Wezezimbiwa Namandla;”;
- (l) ngokushutheka ngemva kwencazelo “uNgqongqoshe” le ncazelo elandelayo: 10
‘izimakethe eziningi’ kushiwo imodeli yemakethe eyingxube ebhekele ukuthengiselana kwemakethe, ukuthengiselana okuphathekayo kanye nokuthengiselana okulawulwayo;”;
- (m) ngokushutheka ngemva kwencazelo “i-National Energy Regulator Act” le ncazelo elandelayo: 15
‘uhlelo lukazwelonke lokuthumela ugesi’ kushiwo uhlelo lokudluliswa kwamandla oluxhumene olusetshenziselwa ukudluliswa kukagesi okhiqizwa yizikhungo zokuphehla ugesi ngenhloso yokuphakela abathengi bangaphakathi nangaphandle kweNingizimu Afrika, ngaphezu kuka-132kV; 20
‘uhlelo olusha lokuphehla amandla kagesi’ kushiwo umthamo kagesi owengeziwe, okuhlanganisa umthamo otholakala ezikhungweni ezintsha zokuphehla okusha, ukwandiswa kwezikhungo ezikhona, noma izikhungo ezikhona ebezingaxhunywanga ohlelweni lukazwelonke lokudluliswa kwamandla, noma uhlelo lokwabiwa kwamandla oluxhumene, ngaphandle— 25
(a) komthamo wezikhungo zokuphehla ukuze zizisebenzisele wona ugesi;
(b) umthamo wezikhungo zokuphehla ezihlinzeka ngogesi kubasebenzisi ngokulandela izivumelwano zokuhlinzeka; 30
(c) umthamo wezikhungo zokuphehla okukhulunywe ngawo ephuzwini loku-1 lweSheduli 2 yoMthetho; kanye
(d) nomthamo wezikhungo zokuphehla ugesi othunyelwa kwamanye amazwe, ogunyazwe uNgqongqoshe;”;
- (n) ngokushutheka ngemuva kwencazelo “umuntu” lezi zincazelo ezilandelayo: 35
‘ukuthengiselana ngqo’ kushiwo ukuthengiselana okungenwa kukho abaphehli, abathengi kanye nabahwebi ukuze kukhiqizwe amandla kagesi okubandakanya ukuphuthulwa kwesivumelwano sokuthenga amandla ukuze kuhlengatshwane nesidingo kanye nokukhiqiza njengoba kudingwa umqhubi wohlelo; 40
‘abahlanganyeli bemakethe yamandla’ kusho abahlanganyeli abahlangabezana nemibandela yokufaneleka ebekiwe, futhi bakhethe ukubamba iqhaza, endaweni yemakethe esungulwe umqhubi wemakethe;
‘isivumelwano sokuthenga amandla’ kushiwo isivumelwano phakathi komphehli kanye nomthengi, ukuze kudayiswe futhi kuthengwe amandla kagesi noma amandla okuphehla ugesi;”;
- (o) ngokufaka endaweni yencazelo “inani” le ncazelo elandelayo: 50
‘inani’ kushiwo imali kagesi kumsebenzisi noma umthengi etshengisa izindleko zokusiza lowo msebenzisi noma umthengi futhi ezingahlanganisa umthelo ngokunqunywa nguMlawuli, kanye nenkokhelo eyengeziwe, intela, inteliso noma intela ebekwe umasipala ngokwesigaba sama-229 soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996;”;
- (p) ngokushutheka ngemuva kwencazelo “nquma” lezi zincazelo ezilandelayo: 55
‘obhalisiwe’ kushiwo umuntu obhaliswe noMlawuli ngokwesigaba sesi-9;
‘ukuthengiselana okulawulwayo’ okwenziwayo okulawulwayo’ kushiwo umsebenzi odinga ukugunyazwa ngokomthetho noma ukugadwa, ikakhulukazi lapho ukusetshenziswa kwamandla emakethe kungenzeka noma kubonakala khona (isibonelo, izindleko zenethiwekhi); 60

- (p) by the substitution for the definition of “reticulation” of the following definition:
‘reticulation’ means the conveyance of electricity through a reticulation power system which operates at or below 11kV excluding trading, and “reticulate” and “reticulating” have corresponding meanings;”; 5
- (q) by the substitution for the definition of “supply” of the following definition:
“‘supply’ means trading, system operation, export and import and the generation, transmission or distribution of electricity;”;
- (r) by the insertion after the definition of “supply” of the following definitions:
“‘system operation’ means the operation of the national transmission power system in real time, including dispatching, scheduling of transmission and ancillary services, generation outage coordination, transmission congestion management and coordination, and such other activities as may be required for the reliable and efficient operation of the national transmission power system;” 10
‘system operator’ means the person who is responsible for system operation;”; 15
- (s) by the substitution for the definition of “tariff” of the following definition:
“‘tariff’ means a charge to a customer or end user in respect of a licensed activity or registered activity, other than a surcharge, tax, levy or duty imposed by a municipality in terms of section 229 of the Constitution of the Republic of South Africa, 1996;”; 20
- (t) by the insertion after the definition of “tariff” of the following definition:
“‘trader’ means a person who trades in electricity;”;
- (u) by the substitution for the definition of “trading” of the following definition: 25
“‘trading’ means the wholesale or retail buying [or] and selling of electricity [as a commercial activity], and ‘trade’ has a corresponding meaning;”;
- (v) by the insertion after the definition of “trading” of the following definition:
“‘trading platform’ means a platform where power market participants conduct trade;”; 30
- (w) by the substitution for the definition of “transmission” of the following definition:
“‘transmission’ means the conveyance of electricity through a transmission power system, excluding system operation and trading, and ‘transmit’ and ‘transmitting’ have corresponding meanings;”; 35
- (x) by the insertion after the definition of “transmission” of the following definition:
‘transmission development plan’ means the plan for the development of the national transmission power system referred to in sections 34(6)(b) and 35(3A);”; 40
- (y) by the substitution for the definition of “transmission power system” of the following definition:
“‘transmission power system’ means a network for the conveyance of electricity which operates above a nominal voltage of 132kV including assets that are approved by the Regulator to be part of the transmission power system;”; 45
- (z) by the insertion after the definition of “transmission power system” of the following definition:
“‘Transmission System Operator SOC Ltd’ means a juristic person established in terms of section 34A(1);”; 50
- (zA) by the substitution for the definition of “transmitter” and “this Act” of the following definitions, respectively:
“‘transmitter’ means a person who [transmits electricity] manages and maintains a transmission power system; [and] 55
‘this Act’ includes any regulation or rule made or issued in terms thereof[.]; and”; and
- (zB) by the insertion after the definition of “this Act” of the following definitions:

- (p) ngokufaka endaweni yencazelo “ukufakelwa kukagesi” le ncazelo elandelayo:
‘ukufakela ugesi’ kushiwo ukudluliswa kukagesi ngohlelo lwamandla okuxhumanisa olusebenza ngo-11kV noma ngaphansi ngaphandle kokuhwebelana, kanye “nokuhlukanisa” kunezincazelo ezifanayo;”;
- (q) ngokufaka endaweni yencazelo “nika” le ncazelo elandelayo:
“‘nika’ kushiwo ukuhweba, ukusebenza kohlelo, ukuthekelisa kanye nokungenisa nokuphehla, ukuthunyelwa nokwabiwa kukagesi;”;
- (r) ngokushutheka ngemuva kwencazelo “nika” lezi zincazelo ezilandelayo:
“‘ukusetshenziswa kohlelo’ kushiwo ukusetshenziswa kohlelo lukazwelonke lokuthumela amandla kagesi ngesikhathi sangempela, okuhlanganisa ukuthunyelwa, ukuhlelwa kokudluliswa kwamandla kanye nemisebenzi yokusiza, ukuxhumanisa ukunqamuka kokuphehla, ukulawulwa nokuxhumanisa ukudluliswa kwamandla kagesi, kanye neminye imisebenzi engadingeka ukuze kube nokusebenza okuthembekile nokuyimpumelelo kohlelo lukazwelonke lokudluliswa kukagesi;
‘umqhubi wohlelo’ kushiwo umuntu obhekele ukusebenza kohlelo;”;
- (s) ngokufaka endaweni yencazelo “umthelo” le ncazelo elandelayo:
“‘umthelo’ kushiwo imali ekhokhiswa umthengi noma umsebenzisi maqondana nomsebenzi ogunyaziwe noma obhalisiwe, ngaphandle kwenkokhelo eyengeziwe, intela, ezingahlanganisa umthelo ngokunqunywa nguMlawuli, kanye nenkokhelo eyengeziwe, intela, inteliso noma intela ebekwe umasipala ngokwesigaba sama-229 soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996;”;
- (t) ngokushutheka ngemuva kwencazelo “umthelo” le ncazelo elandelayo:
“‘umhwebi’ kushiwo umuntu ohweba ngoges;”;
- (u) ngokufaka endaweni yencazelo “ukuhweba” le ncazelo elandelayo:
“‘ukuhweba’ kusho ukuthengwa kukagesi ezitolo ezinkulu noma ezincane kanye nokudayiswa kukagesi [njengomsebenzi wokwenza imali], futhi ‘hweba’ kunencazelo efanayo;”;
- (v) ngokushutheka ngemuva kwencazelo “ukuhweba” le ncazelo elandelayo:
“‘inkundla yokuhweba’ kushiwo inkundla lapho abahlanganyeli bemakethe kagesi behweba khona;”;
- (w) ngokufaka endaweni yencazelo “ukuthumela” le ncazelo elandelayo:
“‘ukuthumela’ kushiwo ukuhambisa ugesi ngohlelo lokuthumela amandla kagesi, ngaphandle kokusetshenziswa kohlelo kanye nokuhweba, kanti igama ‘thumela’ negama ‘ukuthumela’ anencazelo ehambisanayo;”;
- (x) ngokushutheka ngemuva kwencazelo “ukuthumela” le ncazelo elandelayo:
“‘uhlelo lokuthuthukisa ukuthumela’ kushiwo uhlelo lokuthuthukisa uhlelo lukazwelonke lokuthumela ugesi okukhulunywe ngalo esigabeni sama-34(6)(b) kanye nesama-35(3A);”;
- (y) ngokufaka endaweni yencazelo “uhlelo lwamandla okudluliswa kukagesi” le ncazelo elandelayo:
“‘uhlelo lwamandla okuthumela ugesi’ kushiwo inethiwekhi yokudlulisa ugesi esebenza ngaphezu kwamandla kagesi angu-132kV okuhlanganisa nezimpahla ezigunyazwe nguMlawuli ukuba zibe yingxenye yohlelo lwamandla okudluliswa kukagesi;”;
- (z) ngokushutheka ngemuva kwencazelo “uhlelo lwamandla okudluliswa kukagesi le ncazelo elandelayo:
“‘i-Transmission System Operator SOC Ltd’ kushiwo igatsha elisungulwe ngokwesigaba sama-34A(1);”;
- (zA) ngokufaka endaweni yezincazelo “othumelayo” kanye “lo Mthetho” lezi zincazelo ezilandelayo:
“‘othumelayo’ kusho umuntu [othumela ugesi] ophatha futhi ogcina uhlelo lwamandla okudluliswa kukagesi; [kanye]
‘lo Mthetho’ ubandakanya noma yimuphi umthetho noma isimiso esenziwe noma imikhawulo ekhishwe kuwo[.]; kanye”; kanye
- (zB) ngokushutheka ngemuva kwencazelo “lo Mthetho” lezi zincazelo ezilandelayo:

“‘**vertically integrated licensee**’ means a person who holds one or more of the licences listed in section 4(a)(i), but excludes a person who only holds licences in terms of section 4(a)(i)(bb) and (cc); and ‘**vesting contract**’ means a contract or other financial arrangement between the National Transmission Company South Africa SOC Ltd and an Eskom generator or a distribution licensee, as the case requires, for the sale of a specified amount of electricity at a price determined by the Regulator as a mechanism to facilitate the transition to a competitive market.”

5

Amendment of section 2 of Act 4 of 2006

10

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in the Republic of South Africa;”

Insertion of section 2A in Act 4 of 2006

15

3. The following section is hereby inserted in the principal Act after section 2:

“**Application of Act**

2A. (1) This Act is applicable to the generation, transmission, distribution, reticulation, system operation, trading, and import and export, of electricity activities, and to persons undertaking such activities.

20

(2) The Act is not applicable to the operation of generation facilities with or without battery storage—

- (a) for the sole purpose of providing standby or back-up electricity;
- (b) where the facility, irrespective of capacity (megawatts), does not have a point of connection to the facility; or
- (c) with a capacity of not more than 100 kilowatts, which complies with the code, has a point of connection and is subject to the distributor’s prescribed conditions relating to the continued use of the point of connection.

25

(3) For the purposes of subsection (2), the Regulator shall prescribe the manner in which the distributor shall keep a register of each facility.”

30

Substitution of section 3 of Act 4 of 2006

4. The following section is hereby substituted for section 3 of the principal Act:

“**Regulator**

3. (1) The National Energy Regulator established by section 3 of the National Energy Regulator Act is the custodian and enforcer of the regulatory framework provided for in this Act.

35

(2) The Regulator has regulatory authority over persons undertaking activities, which are subject to this Act and has the powers to issue, amend, withdraw, suspend and revoke licences and determine the registration, revocation and deregistration of persons or activities in accordance with this Act.”

40

Amendment of section 4 of Act 4 of 2006, as amended by section 2 and renumbered by section 16 of Act 28 of 2007

5. Section 4 of the principal Act is hereby amended—

45

“‘**umnikazi welayisensi edidiyelwe**’ kushiwo umuntu onelayisensi eyodwa noma amalayisensi amaningi asohlwini lwesigaba sesi-4(a)(i), kodwa akubandakanyi umuntu onamalayisensi kuphela ngokwesigaba sesi-4(a)(i)(bb) kanye no (cc); futhi
 ‘**inkontileka yokuthenga**’ kushiwo inkontileka noma olunye uhlelo lwezezimali phakathi kwe-*National Transmission Company South Africa SOC Ltd* kanye nesiphehli sakwa-*Eskom* noma umnikazi welayisensi yokusabalalisa, njengoba kudingeka, ukuthengiswa kwenani elithile likagesi ngentengo enqunywe uMlawuli njengendlela yokwenza lula ukuguqukela emakethe ebangisanayo.”

5

10

Ukuchitshiyelwa kwesigaba 2 soMthetho 4 wezi-2006

2. Ngakho-ke isigaba sesi-2 soMthethongqangi sichitshiyelwe ngokufaka endaweni yendima (a) le ndima elandelayo:

“(a) ukuzuza intuthuko esebenza kahle, ephumelelayo, eqhubekayo futhi ehlelekile kanye nokusebenza kwengqalasizinda yokuphakela ugesi eRiphabhulikhi yaseNingizimu Afrika;”

15

Ukushuthekwa kwesigaba 2A soMthetho 4 wezi-2006

3. Ngakho-ke isigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba sesi-2:

“**Ukusetshenziswa koMthetho**”

20

2A. (1) Lo Mthetho usebenza ekuphehleni, ekudluliseni, ekusabalaliseni, ekuhlukaniseni, ekusetshenzisweni kohlelo, ekuhwebeni, nasekungeniseni nasekutheliseni, kwemisebenzi kagesi, nakubantu abenza leyo misebenzi.

(2) UMthetho awusebenzi ekusebenzeni kwezindawo zokuphehla ngebhethri noma ngaphandle kwayo—

25

(a) ngenhloso eyodwa yokuhlinzeka ngogesi wokulinda ukusetshenziswa noma wokugada inkinga;

(b) laphe isikhungo, kungakhathalekile umthamo waso (ama-megawatts), singenayo indawo yokuxhumana nesikhungo; noma

30

(c) enamandla angeqile ku-100 kilowatts, ehambisana nekhodi, inendawo yokuxhumana futhi ingaphansi kwemibandela enqunywe umsabalalisi ephathelene nokusetshenziswa okuqhubekayo kwendawo yokuxhuma.

(3) Ngezinhloso zesigatshana sesi-(2), uMlawuli uzobeka indlela umsabalalisi okufanele agcine ngayo irejista yesikhungo ngasinye.”

35

Ukufaka endaweni yesigaba 3 soMthetho 4 wezi-2006

4. Ngakho-ke isigaba esilandelayo sifakwe endaweni yesigaba sesi-3 soMthethongqangi

“**UMlawuli**”

40

3. (1) UMlawuli kaGesi waZwelonke owasungulwa isigaba sesi-3 soMthetho kaZwelonke wokuLawula kukaGesi ungumbheki futhi ungumphoqeleli wohlaka lokulawula oluhlinzekwe kulo Mthetho.

(2) UMlawuli unegunya lokulawula kubantu abenza imisebenzi, engaphansi kwalo Mthetho futhi unamandla okukhipha, ukuchibiyela, ukuhoxisa, ukumisa nokuhoxisa amalayisensi futhi anqume ukubhaliswa, ukuhoxiswa kanye nokuhoxiswa kokubhaliswa kwabantu noma imisebenzi ngokuhambisana nalo Mthetho.”

45

Ukuchitshiyelwa kwesigaba 4 soMthetho 4 wezi-2006, njengoba uchitshiyelwe isigaba 2 futhi njengoba sinezinombolob ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

50

5. Ngakho-ke isigaba sesi-4 soMthethongqangi sichitshiyelwe—

- (a) by the substitution in paragraph (a) for subparagraph (i) of the following subparagraph:
 “(i) consider applications for [licenses] licences and may issue licences for—
 (aa) the operation of generation, transmission or distribution facilities; 5
 (bb) the import and export of electricity;
 (cc) trading;
 (dd) market operator; or
 (ee) system operator,
 subject to the provisions of section 7;” 10
- (b) by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph:
 “(ii) set and approve prices and tariffs in a manner prescribed by a rule;”
- (c) by the substitution in paragraph (a) for subparagraph (v) of the following subparagraph: 15
 “(v) (aa) establish and manage monitoring and information systems and a national information system, relating to matters within the Regulator’s jurisdiction; and
 (bb) co-ordinate the integration thereof with other relevant information systems;” 20
- (d) by the substitution in paragraph (a) for subparagraph (vii) of the following subparagraph:
 “(vii) enforce performance and compliance with this Act and licence conditions imposed by the Regulator in terms of this Act, and take appropriate steps in the case of non-performance or non-compliance;” 25
- (e) by the addition in paragraph (a) after subparagraph (vii) of the following subparagraph:
 “(viii) exercise any power or perform any duty conferred or imposed on it under this Act or any other law;” and
- (f) by the substitution for paragraph (b) of the following paragraph: 30
 “(b) may—
 (i) mediate and arbitrate, as the case requires, disputes between generators, transmitters, distributors, traders, resellers, the transmission system operator and licensees or customers or end users excluding disputes between registrants and their customers; 35
 (ii) undertake investigations and inquiries into the activities of licensees and other matters contemplated in this Act;
 (iiA) at its own instance, or following an investigation of a complaint—
 (aa) determine whether any person is engaged in an activity requiring a licence in terms of section 7, or registration in terms of section 9, without that person holding a licence or registration certificate in respect of that activity; and 40
 (bb) direct any person engaged in an activity requiring a licence in terms of section 7 or registration in terms of section 9, who is not in possession of the necessary licence or registration certificate, to cease such activity; 45
 or
 (iii) perform any other act incidental to its functions.”

Amendment of section 6 of Act 4 of 2006

50

6. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Regulator **[must]** may require a licensee to establish and fund a customer or end users forum in the manner set out in the licence held by such a person.”

55

- (a) ngokufaka endaweni yendima (a) yendinyana (i) ngale ndinyana elandelayo:
 “(i) abheke izicelo zamalaysensi aphinde akhiphe amalaysensi—
 (aa) asebenzise izinto zokuphehla, zokwethula zokuthumela nokwaba;
 (bb) ukungeniswa nokuthekeliswa kukagesi; 5
 (cc) ukuhweba;
 (dd) umqhubi wemakethe; noma
 (ee) umqhubi wohlelo,
kuncike emihlinzekweni yesigaba sesi-7;”;
- (b) ngokufaka endaweni yendima (a) yendinyana (ii) ngale ndinyana elandelayo: 10
 “(ii) abeke futhi agunyaze amanani kanye nemithelo ngendlela ebekwe umthetho;”;
- (c) ngokufaka endaweni yendima (a) yendinyana (v) ngale ndinyana elandelayo:
 “(v) (aa) asungule, aphaathe izinhlelo zokwalusa nezolwazi kanye nohlelo lolwazi lukaZwelonke, maqondana nezindaba ezingaphansi kwamandla oMlawuli; futhi 15
 (bb) abuye alungise ukuxhumana kwazo nezinye izinhlelo zolwazi ezihambisana nazo;”;
- (d) ngokufaka endaweni yendima (a) yendinyana (vii) ngale ndinyana elandelayo: 20
 “(vii) aphoqelegele ukuthi kusetshenzwe ngendlela nokuthi imigomo ebekiwe kulo Mthetho ilandelwe, kanye nemibandela yamalaysensi ebekwe uMlawuli ngokwalo Mthetho, nokuthatha izinyathelo ezifanele uma kungasetshenzwa ngokufanele noma kungathotshelwa imithetho;”;
- (e) ngokwengeza indima (a) ngemuva kwendinyana (vii) yale ndinyana elandelayo: 25
 “(viii) ukusebenzisa noma yimaphi amandla noma ukwenza noma yimuphi umsebenzi onikezwe noma obekwe kuwo ngaphansi kwalo Mthetho nanoma yimuphi omunye umthetho;”;
- (f) ngokufaka endaweni yendima (b) le ndima elandelayo: 30
 “(b) angenza lokhu—
 (i) ukulamula nokwahlulela, njengokudinga kwecala, izingxabano phakathi kwabaphehli, abathumeli, abasabalalisi, abahwebi, abadayisi, abaqhubi bohlelo lokuthumela ugesi kanye nabanikazi bamalaysensi noma abathengi noma abasebenzisi ngaphandle kwezingxabano phakathi kwababhalisile nabathengi babo; 35
 (ii) aphenye abuye abuze ngalokho okwenziwa yilabo abanamalaysensi kanye nezinye izindaba okukhulunywe ngazo kulo Mthetho; 40
 (iiA) ngesikhathi sayo, noma ngokulandela uphenyo lwesikhalo—
 (aa) inqume ukuthi ngabe kukhona yini umuntu owenza umsebenzi odinga ilayisensi ngokwesigaba sesi-7, noma ukubhaliswa ngokwesigaba sesi-9, ngaphandle kwalowo muntu ophethe ilayisensi noma isitifiketi sokubhalisa mayelana nalokho okwenziwayo; futhi 45
 (bb) iyale noma yimuphi umuntu owenza umsebenzi odinga ilayisensi ngokwesigaba sesi-7 noma ukubhaliswa ngokwesigaba sesi-9, ongenayo ilayisensi noma isitifiketi sokubhalisa, ukumisa lowo msebenzi; noma 50
 (iii) nokwenza eminye imisebenzi ehambisana nemisebenzi.”.

Ukuchitshiyelwa kwesigaba 6 soMthetho 4 wezi-2006

6. Ngakho-ke isigaba sesi-6 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigaba sesi-(2) lesi sigatshana esilandelayo:

- “(2) U~~Mlawuli~~ **[kufanele acele]** angacela, lowo onelayisensi ukuthi asungule futhi afake imali kulesi sidlangala sabathengi nabantu abasebenzisa izinto ezithengiswayo, njengoba kubekiwe elayisensini yalowo muntu.”. 55

Amendment of section 7 of Act 4 of 2006, as renumbered by section 16 of Act 28 of 2007

7. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Subject to sections 8 and 9, [No] no person may, without [a] the appropriate licence issued by the Regulator in accordance with this Act or, unless authorised in terms of a licence condition contemplated in section 14(1)(t)— 5
- (a) operate any generation, transmission or distribution facility;
 - (b) import or export any electricity; **[or]**
 - (c) be involved in trading[.]; 10
 - (d) be a market operator; or
 - (e) engage in system operation.”.

Substitution of section 8 of Act 4 of 2006, as amended by section 3 and renumbered by section 16 of Act 28 of 2007

8. The following section is hereby substituted for section 8 of the principal Act: 15

“Certain activities not licensed

8. The Minister may, after consultation with the Regulator and stakeholders in the advisory forum referred to in section 5, determine by notice in the *Gazette* that any activity contemplated in section 7(1), need no longer be a licensed activity, from the date set out in such notice.”. 20

Amendment of section 9 of Act 4 of 2006, as amended by section 4 and renumbered by section 16 of Act 28 of 2007

9. Section 9 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 25

“(1) The Minister may, in consultation with the Regulator, determine by notice in the *Gazette* that any person involved in an activity relating to trading, import or export, or the generation, transmission or distribution of electricity that does not require licensing in terms of section 7, read with section 8, must register with the Regulator.”;
- (b) by the substitution in subsection (4)(b) for the full stop at the end of paragraph (b) of a semi-colon; and 30
- (c) by the addition in subsection (4) after paragraph (b) of following paragraphs:

“(c) compliance with the technical codes that may be applicable from time to time; 35

(d) compliance with regulatory requirements necessary for the sustained operation of the national transmission power system and interconnected distribution power systems; and

(e) payment of fees imposed by licensees for granting registrants access to their network.”.

Amendment of section 10 of Act 4 of 2006, as amended by section 5 and renumbered by section 16 of Act 28 of 2007 40

10. Section 10 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 45

“(a) a description of the applicant, including its vertical and horizontal relationships with other persons engaged in the operation of generation, transmission and distribution facilities, the import or

Ukuchitshiyelwa kwesigaba 7 soMthetho 4 wezi-2006, njengoba unezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

7. Ngakho-ke isigaba sesi-7 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

- “(1) Ngokuncike esigabeni sesi-8 kanye nese-9, [Akekho] akekho umuntu, ngaphandle uma enelayisense efanele ekhishwe nguMlawuli ehambelana nalo Mthetho noma, ngaphandle uma egunyazwe ngokombandela welayisensi ohlongozwe esigabeni se-14(1)(t)—
- (a) ongasebenzisa izinto zokuphehla, zokuthumela, nezokwaba;
 - (b) ongangenisa noma akhiphe ugesi emazweni angaphandle kwezwe lethu; [noma]
 - (c) ongazibandakanya ekuhwebeni[.];
 - (d) abe ngumqhubi wemakethe; noma
 - (e) ahlanganyele ekusebenziseni uhlelo.”.

Ukufaka endaweni yesigaba 8 soMthetho 4 wezi-2006, njengoba uchitshiyelwe isigaba 3 futhi njengoba unezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

8. Ngakho-ke lesi sigaba esilandelayo sifakwe endaweni yesigaba 8 soMthethongqangi:

“Eminye imisebenzi engadingi ilayisensi

8. UNgqongqoshe angakwazi emuva kokuthi esexhumene noMlawuli, nomphakathi kanye nezigungu zokweluleka okukhulunywe ngazo esigabeni sesi-5, ukuthi anqume ukufaka isaziso kwiGazethi esimayelana nanoma yimiphi imisebenzi ecatshangiwe esiqeshini sesi-7(1), ayidingi ukuthi ibe yimisebenzi edinga ilayisense kusukela kulelo langa eliyobe libekwe kuleso saziso, esinjenga lesa.”.

Ukuchitshiyelwa kwesigaba 9 soMthetho 4 wezi-2006, njengoba uchitshiyelwe isigaba 4 futhi njengoba unezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

9. Ngakho-ke isigaba sesi-9 soMthethongqangi sichitshiyelwe—

- (a) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

“(1) UNgqongqoshe angakwazi ukuthi, emuva kokuthi esexoxisene noMlawuli, anqume ukufaka isaziso kwiGazethi esisho ukuthi noma yimuphi umuntu ozibandakanye emisebenzini yokuhweba, yokungenisa nokuthekelisa, noma yokuphehla, yokuthumela noma yokwabiwa kukagesi; engadingi ilayisensi, ngokwesigaba sesi-7, sifundwa kanye nese-8, kumele abhalise noMlawuli.”;
- (b) ngokufaka endaweni yesigatshana sesi-(4)(b) ungqi ekugcineni kwendima (b) esikhundleni sikakhefanangqi; kanye
- (c) ngokwengeza esigatshaneni sesi-(4) ngemuva kwendima (b) lezi zindima ezilandelayo:

“(c) ukuhambisana namakhodi obuchwepheshe angase asebenze ngezikhathi ezithile;

(d) ukuhambisana nezidingo zokulawula ezidingekayo ekusebenzeni okuqhubekayo kohlelo lukazwelonke lokuthumela ugesi kanye nohlelo lokwabiwa kwamandla oluxhumene; futhi

(e) ukukhokha kwezimali ezibekwe abanikazi bamalayisensi ukuze banikeze ababhalisile ukufinyelela kwinethiwekhi yabo.”.

Ukuchitshiyelwa kwesigaba 10 soMthetho 4 wezi-2006, njengoba uchitshiyelwe isigaba 5 futhi wabhalwa njengobaunezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

10. Ngakho-ke isigaba se-10 soMthethongqangi sichitshiyelwe—

- (a) ngokufaka endaweni yesigatshana sesi-(2) sendima (a) le ndima elandelayo:

“(a) incazelo yomuntu ofake isicelo, kubandakanya nobuhlobo obunhlobonhlobo nabantu abasebenza umsebenzi wokwakha noma wokusebenzisa izinto zokuphehla amandla kagesi, zokuthumela, zokwaba, nokuhweba ngogesi, ukungenisa

- export of electricity, trading, market operation, system operation or any other prescribed activity relating thereto;”;
- (b) by the substitution in subsection (2) for paragraph (h) of the following paragraph:
 “(h) such other particulars as the Regulator may prescribe by a rule.”; 5
- (c) by the addition after subsection (2) of the following subsection:
 “(3) The applicant may request the confidential treatment of commercially sensitive information contained in an application for a licence and, subject to the concurrence of the Regulator, such information may be withheld from publicly available copies of the licence application.”. 10

Amendment of section 11 of Act 4 of 2006, as renumbered by section 16 of Act 28 of 2007

11. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) When application is made for a licence the Regulator must, in writing, direct, the applicant to publish a notice of the application, in at least two official languages as envisaged in section 6 of the Constitution of the Republic of South Africa, 1996, for a period of 30 days, in newspapers or other media, as the Regulator may specify, circulating nationally and in the area of the proposed activity.”; 15 20
- (b) by the deletion of subsection (3); and
- (c) by the substitution for subsection (4) of the following subsection:
 “(4) The Regulator must, within 30 days from the date of expiry of the period contemplated in subsection (2)(d), consider objections to the application contemplated in subsection (1) and make its decision available to the public, together with its reasons for such decision.”. 25

Amendment of section 12 of Act 4 of 2006, as renumbered by section 16 of Act 28 of 2007

- 12.** Section 12 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph: 30
- “(a) must, if objections have been received, within 30 days from the date of expiry of the period contemplated in section 11(2)(d), furnish the applicant with all substantiated objections in order to allow the applicant to respond thereto; and”.

Amendment of section 13 of Act 4 of 2006, as amended by section 6 and renumbered by section 16 of Act 28 of 2007 35

13. Section 13 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The Regulator must make a decision to grant or refuse an application in the prescribed manner within 60 days—”; 40
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 “(b) after receiving the response of the applicant as contemplated in section 12(a) or after receiving the information contemplated in section 12(b), whichever is the later date.”; 45
- (c) by the substitution for subsection (3) of the following subsection:
 “(3) The Regulator must issue separate licences for [—
 (a) the operation of generation, transmission and distribution facilities;
 (b) the import and export of electricity; or
 (c) trading] the activities listed in section 4(a)(i).”; and 50

nokukhipha ugesi emazweni angaphandle kwezwe lethu, ukuhweba, ukuqhuba imakethe, ukusetshenziswa kohlelo noma nanoma yimuphi umsebenzi obhekelele izindaba ezixhumene kanye nakho lokhu okungenhla;”;

- (b) ngokufaka endaweni yesigatshana sesi-(2) sendima (h) le ndima elandelayo: 5
 “(h) neminye imininingwane enganqunywa uMlawuli ngomthetho.”;
- (c) ngokwengeza ngemuva kwesigatshana sesi-(2) lesi sigatshana esilandelayo: 10
 “(3) Umfakisiselo angacela ukuthi luphathwe ngendlela yobumfihlo ulwazi olubucayi kwezohwebo oluqukethwe esicelweni selayisensi futhi, kuncike ngokuvumelana noMlawuli, lolo lwazi lungagodlwa kumakhophi atholakala kumphakathi esicelo selayisensi.”.

Ukuchitshiyelwa kwesigaba 11 soMthetho 4 wezi-2006, njengoba sinezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

11. Ngakho-ke isigaba se-11 soMthethongqangi sichitshiyelwe—

- (a) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo: 15
 “(1) Lapho kufakwa isicelo selayisensi uMlawuli kufanele, ngokubhala, aqondise, umfakisiselo ukuba ashicilele isaziso sesicelo, okungenani ngezilimi ezimbili ezisemthethweni njengoba kubekiwe esigabeni sesi-6 soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996, isikhathi esiyizinsuku ezingama-30, emaphephandabeni noma eminye imithombo yezindaba, ngendlela okungasho ngayo uMlawuli, esakazwa kuzwelonke nasendaweni yomsebenzi ohlongozwayo.”;
- (b) ngokususa isigatshana sesi-(3); kanye
- (c) nangokufaka endaweni yesigatshana sesi-(4) lesi sigatshana esilandelayo: 25
 “(4) UMlawuli kufanele, zingakapheli izinsuku ezingama-30 kusukela osukwini lokuphelelwa yisikhathi esihlongozwe esigatshaneni sesi-(2)(d), abheke ukuphikisa okukhona kwesicelo esihlongozwe esigatshaneni soku-(1) futhi enze isinqumo sakhe sibe sobala empakathini kanye nezizathu zaleso sinqumo.”.

Ukuchitshiyelwa kwesigaba 12 soMthetho 4 wezi-2006, njengoba sinezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

12. Ngakho-ke isigaba se-12 soMthethongqangi sichitshiyelwe ngokufaka endaweni yendima (a) le ndima elandelayo:

- “(a) uma ukuphikisa kutholwe, zingakapheli izinsuku ezingama-30 kusukela osukwini lokuphelelwa yisikhathi esihlongozwe esigabeni se-11(2)(d), kufanele anike lowo ofake isicelo lezo zicelo eziphikisa isicelo sakhe ukuze athole ithuba lokuphendula kuzona; kanye.”.

Ukuchitshiyelwa kwesigaba 13 soMthetho 4 wezi-2006, njengoba uchitshiyelwe isigaba 6 futhi njengoba sinezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

13. Ngakho-ke isigaba se-13 soMthethongqangi sichitshiyelwe—

- (a) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo: 45
 “(1) UMlawuli kufanele enze isinqumo sokuvuma noma ukwenqaba isicelo elandela indlela enqunyiwe zingakapheli izinsuku ezingama-60—”;
- (b) ngokufaka endaweni yesigatshana soku-(1) sendima (b) le ndima elandelayo: 50
 “(b) ngemuva kokuthola impendulo yomfakisiselo njengoba kuhlongoziwe esigabeni se-12(a) noma ngemva kokuthola imininingwane echaziwe esigabeni se-12(b), kuye ngokuthi yiluphi usuku lwakamuva.”;
- (c) ngokufaka endaweni yesigatshana sesi-(3) lesi sigatshana esilandelayo: 55
 “(3) UMlawuli kumele akhiphe amalayisense ehlukeni alokhu [—
 (a) okusebenzisa izinto zokuphehla amandla kagesi, zokuthumela, nezokwaba;
 (b) okungenisa nokukhipha ugesi emazweni angaphandle kwezwe lethu; noma
 (c) okuhweba] imisebenzi ebhalwe esigabeni sesi-4(a)(i).”;

(d) by the deletion of subsection (4).

Amendment of section 14 of Act 4 of 2006, as amended by section 7 and renumbered by section 16 of Act 28 of 2007

14. Section 14 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5
 “(a) the establishment of and compliance with directives to govern relations between a licensee and its customers or end users, including the establishment of customer or end user forums”;
- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 10
 “(d) the setting or approval of prices, charges, rates and tariffs charged by licensees;”;
- (c) by the substitution in subsection (1) for paragraph (f) of the following paragraph: 15
 “(f) the **[format of and]** contents of agreements entered into by licensees and their customers;”;
- (d) by the substitution in subsection (1) for paragraphs (l) and (m) of the following paragraphs, respectively: 20
 “(l) the right to operate generation, transmission or distribution facilities, to import or export electricity, to trade, to perform market operation, to undertake system operation or to perform prescribed activities relating thereto, including exclusive rights to do so, and conditions attached to or limiting such rights; 25
 (m) the duty or obligation to trade, or to generate, transmit or distribute, import or export electricity, or to engage in market operation or system operation and conditions attached to such duties or obligations;”;
- (e) by the insertion in subsection 1 after paragraph (t), of the following paragraph: 30
 (tA) allowing the licensee to sub-contract the performance of the licensed functions, including allowing for the licensee to sub-contract the maintenance and operation of the generation, transmission or distribution facilities;”;
- (f) by the substitution in subsection (1) for paragraph (z) of the following paragraph: 35
 “(z) any other ancillary or incidental condition **[prescribed]** specified by the Regulator.”; and
- (g) by the insertion after subsection (2) of the following subsection: 40
 “(3) The Regulator may, at any time during the license period, amend, vary or add any licence condition.”. 40

Amendment of section 15 of Act 4 of 2006, as amended by section 8 and renumbered by section 16 of Act 28 of 2007

15. Section 15 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 45
 “(1) The Regulator, when subjecting a licence to conditions relating to the setting or approval of prices, charges and tariffs charged by licensees as contemplated in section 14(1)(d)— 45
 (a) must enable an efficient licensee to recover the full cost of **[its]** the licensed **[activities]** activity **[, including a reasonable margin or return];** 50
 (aA) must allow for a reasonable return proportionate to the risk of the licensed activity;
 (b) **[must]** may provide for or prescribe incentives for continued improvement of the technical and economic efficiency with which services are to be provided; 55

(d) nokususa isigatshana sesi-(4).

Ukuchitshiyelwa kwesigaba 14 soMthetho 4 wezi-2006, njengoba uchitshiyelwe isigaba 7 futhi njengoba sinezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007.

14. Ngakho-ke isigaba se-14 soMthethongqangi sichitshiyelwe— 5
- (a) ngokufaka endaweni yesigatshana soku-(1) sendima (a) le ndima elandelayo: 10
- “(a) kusungulwe nokuthi kuhanjise ngokwenqubomgomo ebusa ubudlelwano obuphakathi [kofuna ilayisensi] kumnikazi welayisensi nomthengi noma abasebenzisi, kubandakanya nokusungulwa kwesidlangala sabathengi noma sabasebenzisi;”;
- (b) ngokufaka endaweni yesigatshana soku-(1) sendima (d) le ndima elandelayo: 15
- “(d) ukumiswa noma ukugunyazwa kwamanani entengo, imali ekhokhwayo, intela kamasipala nemithelo ekhokhiswa abanikazi bamalayisensi;”;
- (c) ngokufaka endaweni yesigatshana soku-(1) sendima (f) le ndima elandelayo: 20
- “(f) [ukuhleleka kwesivumelwano nokuqukethwe] okuqukethwe yisivumelwano onelayisense angene kusona kanye nabathengi bakhe;”;
- (d) ngokufaka endaweni yesigatshana soku-(1) endimeni (l) nasendimeni (m) lezi zindima ezilandelayo, ngokulandelayo: 25
- “(l) ilungelo ukusebenzisa izinto zokuphehla amandla kagesi, zokuthumela, nezokwaba; ukungenisa nokukhipha ugesi emazweni angaphandle kwezwe lethu; kanye nokuhweba, ukuqhuba imakethe, ukusebenzisa uhlelo noma ukwenza eminye imisebenzi ehambisana nalokhu, kubandakanya amalungelo okwenza kanje, nesimiso ezihambisana nalokhu noma ukwehlisa lawa malungelo; 30
- (m) emsebenzini noma kwisibopho sokuhweba, sokuphehla amandla kagesi, zokuthumela, nezokwaba, ukungenisa nokuthekelisa ugesi noma ukuzibandakanya ekusebenzeni kwemakethe noma ukusebenza kohlelo nezimo ezihambelana nawo noma okuvimba lawo malungelo;”;
- (e) ngokushutheka esigatshaneni soku-(1) sendima (t), le ndima elandelayo: 35
- (tA) ukuvumela umnikazi welayisensi ukuthi afake ngaphansi kwakhe ukusebenza kwemisebenzi enelayisense, okuhlanganisa ukuvumela umnikazi welayisensi ukuthi afake ngaphansi kwakhe ukulungiswa nokusetshenziswa kwezikhungo zokuphehla ugesi, ukuthumela noma zokusabalalisa;”;
- (f) ngokufaka endaweni yesigatshana soku-(1) sendima (z) le ndima elandelayo: 40
- “(z) nakwezinye izimo ezihambisanayo noma ezingadingekile [ezinqunyiwe] ezishiwo uMlawuli.”; kanye
- (g) nangokushutheka ngemuva kwesigatshana sesi-(2) lesi sigatshana esilandelayo: 45
- “(3) UMlawuli, nganoma ezishiwo uMlawuli, isikhathi ngesikhathi selayisensi, angachibiyela, aguqule noma engeze noma yimuphi umbandela welayisensi.”.

Ukuchitshiyelwa kwesigaba 15 soMthetho 4 wezi-2006, njengoba uchitshiyelwe isigaba 8 futhi njengoba sinezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

15. Ngakho-ke isigaba se-15 soMthethongqangi sichitshiyelwe— 50
- (a) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo: 55
- “(1) UMlawuli, lapho efaka ilayisensi ezimweni eziphathelele nokubeka noma ukuvunyelwa kwamanani entengo, izinkokhiso kanye nezintela ezikhokhiswa abanikazi bamalayisensi njengoba kuhlongozwe esigabeni se-14(1)(d))—
- (a) umuntu onelayisense kumele akwazi ukuthola imali yakhe [kuleyo misebenzi avunyelwe ukuyenza, kubandakanya nenzuzo eyamukelekile] kulowo msebenzi avunyelwe ukuwenza; 60
- (aA) kufanele ivumele inzuzo enhle elingana nengcuphe yomsebenzi onelayisensi;
- (b) [kumele ihlinzekele] ingahlinzekela ukuthi kube nezinto ezizokhuthaza ukuthi kube nentuthuko eqhubekayo kulokho okwenziwayo;

- (d) must avoid undue discrimination between customer categories;
[and]
- (e) may permit the cross-subsidy of tariffs to certain classes of customers[.]; and;
- (f) may have regard to the need to ensure security of supply, the
diversity of supply and to promote renewable energy.”; 5
- (b) by the insertion after subsection (1) of the following subsections:
“(1A) Tariff determinations must take into account all planned
projects reflected in the integrated resource plan and the transmission
development plan insofar as these projects shall impact on the costs of 10
the licensee, for the period during which the tariff shall apply.
(1B) In the case of vertically integrated licensees, the Regulator must
set or approve separate tariffs for each of the licensed activities listed in
section 4(a)(i).”;
- (c) by the substitution for subsection (2) of the following subsection: 15
“(2) A licensee may not charge a customer any [other] tariff [and
make use of provisions in agreements] other than [that determined or
approved by the Regulator as part of its licensing conditions] the
tariff set or approved by the Regulator as, or in accordance with, a licence
condition.”; and 20
- (d) by the addition after subsection (3) of the following subsection:
“(4) Notwithstanding subsection (2), a licensee may charge a
customer a tariff which has not been set or approved by the Regulator
where such tariff is charged pursuant to a direct supply agreement or
arises as an outcome of a competitive market.”. 25

Amendment of section 16 of Act 4 of 2006, as renumbered by section 16 of Act 28 of 2007

16. Section 16 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The [Minister] Regulator must prescribe the procedure to be followed in
varying, suspending, removing or adding any licence condition.”. 30

Amendment of section 17 of Act 4 of 2006, as renumbered by section 16 of Act 28 of 2007

17. Section 17 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively: 35

- “(2) A licensee must, in the circumstances contemplated in subsection (1)(a) and
(b), give the Regulator at least 12 months’ notice in writing of [his or her] its
intention to cease activities, unless the Regulator determines otherwise.

“(2A) The Regulator may—

- (a) if it is alleged in terms of section 18(1) read with section (3A)(d), or 40
(b) on its own assessment,
revoke a license if a licensee has contravened or failed to comply with a license
condition or any provision of this Act.”

- (3) The [Minister] Regulator must prescribe the form and procedure to be
followed in revoking a licence.”. 45

Insertion of section 17A in Act 4 of 2006

18. The following section is hereby inserted in the principal Act after section 17:

- (d) kumele agweme ubandlululo phakathi kwezinhlobo zabathengi bakhe; [kanye]
- (e) ingavumela imixhaso yezinhlelo zemali yentela kubantu abasemazingeni athile[.]; kanye
- (f) angabhekelela isidingo sokuqinisekisa ukuvikeleka kokuphakelwa, ukwehlukahlukana kokuphakelwa kanye nokukhuthaza amandla avuselelekayo.”; 5
- (b) ngokushutheka ngemuva kwesigatshana soku-(1) lezi sigatshana ezilandelayo:
- “(1A) Ukunqunywa kwemithelo kufanele kucabangele wonke amaphrojekthi ahleliwe aboniswa kuhlelo lwensiza oludidiyelwe kanye nohlelo lokuthuthukisa ukuthumela njengoba la maphrojekthi ezoba nomthelela ezindlekweni zomnikazi welayisensi, ngesikhathi lapho imithelo izosebenza khona. 10
- (1B) Endabeni yabanikazi bamalayisense abahlanganisiwe, uMlawuli kufanele abeke noma avume amanani entengo ahlukene omsebenzi ngamunye onelayisensi osohlwini lwesigaba sesi-4(a)(i).”; 15
- (c) ngokufaka endaweni yesigatshana sesi-(2) lesi sigatshana esilandelayo:
- “(2) Onelayisense angeke abiza umthengi noma yiliphi ihlelo lemali yentela [noma enze ezinye izivumelwano] ngaphandle [kwalezo ezinqunywe noma ezigunyazwe nguMlawuli njengengxenye yimibandela yelayisensi] komthelo obekwe noma ogunyazwe nguMlawuli ngokwemibandela yelayisensi.”; kanye 20
- (d) nangokwengeza ngemuva kwesigatshana sesi-(3) lesi sigatshana esilandelayo: 25
- “(4) Naphezu kwesigatshana sesi-(2), umnikazi welayisensi angakhokhisa umthengi intela engamisiwe noma engagunyaziwe uMlawuli lapho leyo ntela ikhokhiswa khona ngokuvumelana nesivumelwano sokuphakela ngqo noma ivela njengomphumela wemakethe ebangisanayo.”. 30

Ukuchitshiyelwa kwesigaba 16 soMthetho 4 wezi-2006, njengoba sinezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

16. Ngakho-ke isigaba se-16 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana sesi-(2) lesi sigatshana esilandelayo:

- “(2) [UNgqongqoshe] UMlawuli kumele anqume inqubo okumele ilandelwe ezimweni ezahlukene, zokumisa, zokwephuca noma zokwengeza imibandela yelayisensi.”. 35

Ukuchitshiyelwa kwesigaba 17 soMthetho 4 wezi-2006, njengoba sinezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

17. Ngakho-ke isigaba se-17 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana sesi-(2) nesesi-(3) lezi sigatshana ezilandelayo, ngokulandelayo: 40

- “(2) Onelayisensi kumele ukuba, ezimweni okukhulunywe ngazo esigabeni soku-(1)(a) no (b), unika uMlawuli okungenani inothisi ebhaliwe yezinyanga ezingu-12 yokumisa imisebenzi yakhe noma ngaphandle kokuthi uMlawuli enquma ngokunye. 45

“(2A) UMlawuli—

- (a) uma kusolwa ngokwesigaba se-18(1) esifundwa nesigaba sesi-(3A)(d), noma (b) ekuzihloleni ngokwakhe, angahoxisa ilayisensi uma umnikazi welayisensi ephule noma ehlulekile ukuthobela umbandela welayisensi nanoma yimuphi umhlinzeko walo Mthetho.” 50
- (3) [UNgqongqoshe] UMlawuli kumele anqume izindlela nezinqubo ezizolandelwa uma kuchithwa ilayisensi.”.

Ukushuthekwa kwesigaba 17A soMthetho 4 wezi-2006

18. Ngakho-ke isigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba se-17: 55

“Revocation and deregistration

17A. (1) The Regulator may vary, suspend or remove any registration on receipt of an application by a registrant or on application by a third party or upon violation of the applicable regulatory requirements.

(2) The Regulator may revoke a registration under the following circumstances:

- (a) On application by a registrant;
- (b) where the facility is no longer required; or
- (c) when the conditions for registration as contemplated in section 9(4) are not met.

(3) A registrant must, in the circumstances contemplated in subsection (2)(a), give the Regulator at least six months’ notice, in writing, of its intention to cease activities, unless the Regulator determines otherwise.”.

Amendment of section 18 of Act 4 of 2006, as renumbered by section 16(b) of Act 28 of 2007

Section 18 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection—

(a) “(3A) If the tribunal finds that the allegation contemplated in subsection (3) is correct it may:

- (a) serve a notice on the licensee directing the licensee to comply with the licence condition;
- (b) impose a penalty contemplated in subsection (4) or any other penalty it deems appropriate;
- (c) recommend the amendment of a licence condition; or
- (d) recommend the revocation of the licence.”; and

(b) by the insertion after subsection (6) of the following subsection:

“(7) The Regulator must prescribe tribunal rules or procedures.”.

Amendment of section 19 of Act 4 of 2006, as renumbered by section 16(b) of Act 28 of 2007

Section 19 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection:

“(1) Notwithstanding the provision of section 18(1), the Regulator may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if there is any urgent ground justifying such suspension or revocation.”.

Substitution of section 20 of Act 4 of 2006, as renumbered by section 16 of Act 28 of 2007

19. The following section is hereby substituted for section 20 of the principal Act:

“Renewal of licence

20. (1) Any generation, transmission or system operation licence issued in terms of this Act is valid for a period of 20 years or such lesser period as the Regulator may determine.

(2) Any distribution, [or] trading, import or export, market operation or system operation licence issued in terms of this Act is valid for the period determined by the Regulator.

(3) A licensee may apply for the renewal of [his or her] its licence.

“Ukuhoxiswa nokuhoxiswa kokubhaliswa

17A. (1) UMlawuli angaguqula, amise okwesikhashana noma asuse noma yikuphi ukubhaliswa lapho ethola isicelo ngomuntu obhalisiwe noma ngokwesicelo ngomunye umuntu wesithathu noma lapho kwephulwa izimfuneko zokulawula ezisebenzayo.

(2) UMlawuli angahoxisa ukubhaliswa ngaphansi kwalezi zimo ezilandelayo:

(a) Ngesicelo sombhalisi;

(b) lapho indawo ingasadingeki; noma

(c) lapho imibandela yokubhaliswa njengoba kuhlongozwe esigabeni sesi-9(4) ingahlonishwa.

(3) Obhalisiweyo kufanele, ezimweni ezihlongozwe esigatshaneni sesi-2(a), anikeze uMlawuli isaziso okungenani sezinyanga eziyisithupha, esibhalwe phansi, ngenjongo yakhe yokuyeka imisebenzi, ngaphandle uma uMlawuli enquma ngenye indlela.”.

“Ukuchitshiyelwa kwesigaba 18 soMthetho 4 wezi-2006, njengoba sinezinombolo ezibhalwe kabusha isigaba 16(b) soMthetho 28 wezi-2007

Ngakho-ke isigaba se-18 soMthethongqangi sichitshiyelwe ngokushutheka ngemuva kwesigatshana sesi-(3) lesi sigatshana esilandelayo—

(a) “(3A) Uma inkantolo ithola ukuthi izinsolo ezihlongozwe esigatshaneni sesi-(3) ziyiqiniso:

(a) inganikeza isaziso kumnikazi welayisensi esiyala umnikazi welayisensi ukuthi athobele umbandela welayisensi;

(b) ingakhipha inhlawulo ehlongozwe esigatshaneni sesi-(4) nanoma iyiphi enye inhlawulo ebona ifanele;

(c) ingancoma ukuba kuchitshiyelwe umbandela welayisensi; noma

(d) ingancoma ukuba kuhoxiswe ilayisensi.” ; futhi

(b) Ngokufaka ngemuva kwesigatshana sesi-(6) lesi sigatshana esilandelayo:

“(7) UMlawuli kufanele abeke imithetho noma izinqubo zenkantolo.”.

Ukuchitshiyelwa kwesigaba 19 soMthetho 4 wezi-2006, njengoba sinezinombolo ezibhalwe kabusha isigaba 16(b) soMthetho 28 wezi-2007

Ngakho-ke isigaba se-19 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

“(1) Naphezu kwemihlinzeko yesigaba se-18(1), uMlawuli ngendlela yesicelo ngesaziso sesiphakamiso angafaka isicelo eNkantolo ePhakeme somyalelo wokumisa noma wokuhoxisa ilayisensi uma kunezizathu eziphuthumayo ezithethelela lokho kumiswa noma ukuhoxiswa.”.

Ukufaka endaweni yesigaba 20 soMthetho 4 wezi-2006, njengoba sinezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007.

19. Ngakho-ke lesi sigaba esilandelayo sifakwe endaweni yesigaba sama-20 soMthethongqangi:

“Ukuvuselelwa kwelayisensi

20. (1) Noma iyiphi ilayisensi yokuphehla, yokuthumela noma yokusebenzisa uhlelo ekhishwe ngokwalo Mthetho isebenza isikhathi esiyiminyaka engama-20 noma lesi sikhathi esingaphansi lesi, njengoba kunganqunywa uMlawuli.

(2) Noma yiliphi ilayisensi lokwaba, [noma] lokuhweba, lokungenisa noma ukuthekelisa, ukuqhuba imakethe noma ukusebenza kohlelo lwelayisensi ekhishwe ngokwemigomo yalo Mthetho isebenza ngokusemthethweni isikhathi esingama lesi esinqunywe nguMlawuli.

(3) Onelayisensi angafaka isicelo sokuvuselela ilayisensi.

(4) **[An application for renewal must be granted, but the]** The Regulator may set different licence conditions upon renewal of a licence subject to the provisions of this section.

(5) A licensee may not assign, cede or transfer a licence to another party without the written consent of the Regulator.”.

5

Amendment of section 21 of Act 4 of 2006, as renumbered by section 16 of Act 28 of 2007

20. Section 21 of the principal Act is hereby amended—

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

“(1) **[A]** Subject to a licence condition imposed in terms of section 14(1)(t), a licence issued in terms of this Act empowers and obliges a licensee to exercise the powers and perform the duties set out in such licence and this Act, and no licensee may cede, transfer or assign any such power or duty to any other person without the prior written consent of the Regulator.”;

15

(b) by the substitution for subsection (3) of the following subsection:

“(3) A transmission or distribution licensee must, to the extent provided for in the licence, provide non-discriminatory access to **[the]** its transmission **[and]** or distribution power **[systems]** system to third parties.”;

20

(c) by the insertion after subsection (3) of the following subsection:

“(3A) The system operator shall not discriminate between different generators or customers in relation to dispatching or balancing the system, except for objectively justifiable and identifiable reasons approved by the Regulator.”;

25

(d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“(4) Access in terms of subsection (3) must be provided on the conditions set out in the licence of such transmitter or distributor, **[that]** which may relate to—”;

30

(e) by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) the strengthening or upgrading of the transmission or distribution power system in order to provide for access, including contributions towards such strengthening or upgrading by the potential users of such systems, if applicable;”;

35

(f) by the substitution in subsection (4) for paragraphs (e) and (f) of the following paragraphs, respectively:

“(e) compliance with any rule[,] or code **[or practice made by the Regulator];** or

40

(f) the **[fees]** tariffs that may be charged by a licensee for the use of such power system.”; and

(g) by the insertion after subsection (4) of the following subsections:

“(4A) Third party access to the transmission and distribution power system must be based on published tariffs, applicable to all eligible customers, and applied objectively and without discrimination between the system users.

45

(4B) A transmission or distribution licensee may refuse access only where it lacks the necessary capacity, with written reasons given for such refusal.

50

(4C) Any party requesting information on the network capacity and measures that would be necessary to reinforce the network, may be charged a reasonable fee for the costs of providing such information.

(4) **[Isicelo sokuvuselela ilayisense kumele sinikezwe kodwa]** Umlawuli angabeka imibandela emisha noma eyehlukile kule ebikade ikhona ngaphambili lapho kuvuselelwa ilayisensi kuncike emihlinzekweni yalesi sigaba.

(5) Lowo onelayisensi akakwazi ukunika omunye umuntu ilayisensi, komunye noma ukupha noma ukudlulisa kwemvume ebhaliwe yoMlawuli.”.

Ukuchitshiyelwa kwesigaba 21 soMthetho 4 wezi-2006, njengoba sinezinombolo ezibhalwe kabusha isigaba 16 soMthetho 28 wezi-2007

20. Ngakho-ke isigaba sama-21 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

“(1) **[A] Kuncike kumbandela welayisensi obekwe ngokwemibandela yesigaba se-14(1)(t),** ilayisensi ekhishwe ngokwalo Mthetho inika onelayisensi igunya namandla nokuthi enze imisebenzi njengoba kubekiwe kwilayisensi nakulo Mthetho, akekho onelayisensi ongayeka, ongadlulisela noma anike omunye umuntu lawa mandla noma anike omunye umsebenzi ngaphandle kokuthi aqale athole imvume ebhaliwe evela kuMlawuli.”;

(b) ngokufaka endaweni yesigatshana sesi-(3) lesi sigatshana esilandelayo:

“(3) Bonke abanamalayisense okuphehla amandla kagesi nokwaba amandla kagesi kumele, ngokwezinga elibekiwe elayisensini, banikeze amathuba okusebenzisa **[izinhlalo zokuphehla amandla kagesi nokuwaba]** uhlelo lokuthumela amandla kagesi noma ukuwaba ngendlela engenako ukubandlulula.”;

(c) ngokushutheka ngemuva kwesigatshana sesi-(3) lesi sigatshana esilandelayo:

“(3A) Umsebenzisi wohlelo ngeke abandlulule phakathi kwabaphehli abahlukene noma abathengi maqondana nokuthumela noma ukulinganisa uhlelo, ngaphandle kwezizathu ezibambekayo nezingahlonzwa ezigunyazwe uMlawuli.”;

(d) ngokufaka endaweni yesigatshana sesi-(4) emagameni andulela indima (a) lawa magama alandelayo:

“(4) Ukukwazi ukusebenzisa izinto zokusebenza ngokwesigaba sesi-(3), kumele kubekwe emibandeleni evezwe elayisensini yalowo mthumeli nomabi wamandla kagesi, engahambisana nalokhu—”;

(e) ngokufaka endaweni yesigatshana sesi-(4) sendima (c) le ndima elandelayo:

“(c) ukuqinisa nokukhuphula izinga lezinhlalo zokuphehla amandla kagesi nezokwabiwa kwamandla ukuze abantu bakwazi ukuzisebenzisa, kubandakanya nalokho okwenziwayo ukuqinisa noma ukuxhasa le ntuthuko yabantu abanokuzisebenzisa lezi zinhlelo, uma kunokwenzeka;”;

(f) ngokufaka endaweni yesigatshana sesi-(4) endimeni (e) nasendimeni (f) lezi zindima ezilandelayo, ngokulandelayo:

“(e) **[ukulandela izimiso]** ukuthobela noma yimuphi umthetho noma indlela yokuziphatha[, **yilowo ohambisa izinto ngokomthetho;** noma

(f) **[imali]** imithelo engabizwa yilowo onelayisensi ngokusebenzisa lezi zinhlelo zamandla.”; kanye

(g) ngokushutheka ngemuva kwesigatshana sesi-(4) lezi zigatshana ezilandelayo:

“(4A) Ukufinyelela komuntu wesithathu emandleni okuthumela nokusabalalisa uhlelo kufanele lusekelwe ezindlekweni ezishicilelwe, ezisebenza kuwo bonke abathengi abafanelekile, futhi zisetshenziswe ngokunenhloso futhi ngaphandle kokubandlulula phakathi kwabasebenzisi bohlelo.

(4B) Umnikazi welayisensi yokuthumela noma yokusabalalisa angenqaba ukufinyelela kuphela lapho kungekho umthamo odingekayo, anikeze izizathu ezibhaliwe zalokho kwenqaba.

(4C) Noma yimuphi umuntu ocela ulwazi mayelana namandla enethiwekhi kanye nezinyathelo ezingadingeka ukuze kuqinise inethiwekhi, angase akhokhiswe imali efanelekile yezindleko zokuhlinzeka lolo lwazi.

(4D) Transmission and distribution licensees shall procure the energy they use to cover energy losses and reserve capacity in their system according to transparent, non-discriminatory and market-based procedures.

(4E) Rules adopted by the Transmission System Operator SOC Ltd for balancing the national transmission power system and the interconnected distribution power systems, including the rules for charging system users of their networks for energy imbalance, shall be objective, transparent and non-discriminatory.”.

5

Amendment of section 22 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

10

21. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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

15

20

Amendment of section 24 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

22. Section 24 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“**24. Rights over roads or streets**”; and

25

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

“(b) Any activity contemplated in paragraph (a) must be undertaken subject to the right of supervision and in accordance with the plans, routes and specifications of the authority or person in control of that road or street, except in cases of emergency or where the authority concerned fails or refuses to co-operate with the licensee.”.

30

Amendment of section 27 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

23. Section 27 of the principal Act is hereby amended by the substitution for paragraph (g) of the following paragraph:

35

“(g) regularly reporting and providing information to the Department responsible for Provincial and Local Government, the National Treasury, the Regulator and customers;”.

Amendment of section 30 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

40

24. Section 30 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) if it is a dispute between licensees, act as mediator or arbitrator if so requested by both parties to the dispute;

45

(b) if it is a dispute between a customer or end user on the one hand and a licensee, **[registered person]** registrant[,], or a person who trades[, **generates, transmits, or distributes electricity**] on the other hand, settle that dispute by such means and on such terms as the Regulator thinks fit.”;

50

(b) by the substitution for subsection (2) of the following subsection:

(4D) Abanikazi bamalayisensi okuthumela nokusabalalisa bayothenga amandla abawasebenzisayo ukuphesha ukulahleka kwamandla futhi bagcine umthamo ohlelweni lwabo ngokwezinqubo ezisobala, ezingabandlululi nezigxile ezimakethe.

(4E) Imithetho etholwe yi-*Transmission System Operator SOC Ltd* yokulinganisa uhlelo lukazwelonke lokuthumela ugesi kanye nezinhlelo zokwabiwa kwamandla ezixhumene, okuhlanganisa nemithetho yokukhokhisa abasebenzisi bohlelo lwamanethiwekhi abo ngokungalingani kwamandla, izoba ngengachemi, esobala futhi ngengabandlululi.”.

10

Ukuchitshiyelwa kwesigaba 22 soMthetho 4 wezi-2006, njengoba sichitshiyelwe isigaba 16 soMthetho 28 wezi-2007

21. Ngakho-ke isigatshana sama-22 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

“(1) Noma yimuphi umuntu ogunyazwe ngonelayisensi, ngokubhaliwe, kumele ngaso sonke isikhathi esifanele angene kunoma iyiphi indawo lapho ugesi unikezwa noma ubukade unikezwa yilowo onelayisensi, ukuze azohlola olayini, amamitha, imishini, ukusebenza kanye nezinto zokusebenza okungezakhe, noma ngenhloso yokuhlola ikhwalithi kagesi osetshenzisiwe, noma lapho ukunikezwa kukagesi kungasadingeki, noma lowo onelayisense enganqamula ukunikeza kukagesi, ngenhloso yokususa olayini, amamitha, imishini, ukusebenza kanye nezinto zokusebenza okungezakhe lo onelayisense.”.

15

20

Ukuchitshiyelwa kwesigaba 24 soMthetho 4 wezi-2006, njengoba sichitshiyelwe isigaba 16 soMthetho 28 wezi-2007

22. Ngakho-ke isigaba sama-24 soMthethongqangi sichitshiyelwe— 25

(a) ngokufaka endaweni yesihloko lesi sihloko esilandelayo:

“24. **Amalungelo amayelana nemigwaqo**”; kanye

(b) nangokufaka endaweni yesigatshana soku-(1) sendima (b) le ndima elandelayo:

“(b) Noma imuphi umsebenzi owodwa ehlongozwe esigabeni (a) kumele iqhutshwe uma kungukuthi amalungelo okulawula ayahambisana namapulani, izindlela kanye nalokho okuchazwe iziphathimandla noma umuntu owengamele leyo migwaqo, ngaphandle uma kunezimo eziphuthumayo, noma lowo oyisiphathimandla ehluleka, noma enqaba ukulandela imigomo yelayisensi.”.

30

35

Ukuchitshiyelwa kwesigaba 27 soMthetho 4 wezi-2006, njengoba sichitshiyelwe isigaba 16 soMthetho 28 wezi-2007

23. Ngakho-ke isigaba sama-27 soMthethongqangi sichitshiyelwe ngokufaka endaweni yendima (g) le ndima elandelayo :

“(g) ukubika njalo nokuhlinzeka ngolwazi eMnyangweni obhekele uHulumeni weziFundazwe kanye noHulumeni waseKhaya, uMgcinimafa kaZwelonke, uMlawuli kanye nabathengi.”.

40

Ukuchitshiyelwa kwesigaba 30 soMthetho 4 wezi-2006, njengoba sichitshiyelwe isigaba 16 soMthetho 28 wezi-2007

24. Ngakho-ke isigaba sama-30 soMthethongqangi sichitshiyelwe— 45

(a) ngokufaka endaweni yesigatshana soku-(1) endimeni (a) nasendimeni (b) lezi zindima ezilandelayo, ngokulandelana:

“(a) uma kungumbango uphakathi kwalabo abanamalayisense, abe ngumxazululi noma umahluleli uma ecelwe yilabo abangezواني; kanye

50

(b) uma umbango uphakathi komthengi nonelaysense, [nomuntu obhalisiwe] obhalisiwe[, noma nomhwebi[, nomphehli kagesi nomethuli noma nomabi kagesi] ngakolunye uhlangothi, axazulule lowo mbango ngaleyo ndlela futhi ngemigomo uMlawuli abona ifanele.”;

55

(b) ngokufaka endaweni yesigatshana sesi-(2) lesi sigatshana esilandelayo:

- “(2) The Regulator may appoint a suitable person to act as a mediator or arbitrator on its behalf, and any action or decision of a person so appointed is deemed to be an action by or decision of the Regulator.”;
- (c) by the substitution for subsection (3) of the following subsection: 5
 “(3) The Regulator must prescribe, by a rule, the procedure to be followed in a mediation and an arbitration and the fees to be paid.”;
- (d) by the deletion of subsection (4); and
- (e) by the addition after subsection (4) of the following subsection: 10
 “(5) When acting as arbitrator, the Regulator or the person contemplated in subsection (2) must issue a decision on the matter, in writing, and such decision is binding on the parties to the dispute.”.

Amendment of section 32 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

25. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15
 “(1) The Regulator must, in applicable circumstances, at its own instance or on receipt of a complaint [**or inquiry**] relating to [**the**] generation, transmission, distribution, [**or**] trading, market operation or system operation, investigate complaints and prepare a preliminary report in respect of—
- (a) [**of**] alleged discrimination regarding tariffs or conditions of access; and 20
 (b) if a licensee is involved, [**of**] an alleged failure to abide by its licensing conditions[; **or**].”.

Amendment of section 33 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

26. Section 33 of the principal Act is hereby amended— 25
 (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) at all reasonable times enter any property on which any activity relating to the supply of electricity is taking place, or is suspected to be taking place, to inspect any facility, equipment, machinery, book, 30
 account or other document relating to electricity found thereat; and.”

Amendment of section 34 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

27. Section 34 of the principal Act is hereby amended— 35
 (a) by the substitution for the heading of the following heading:
 “**34. Additional electricity, [New] new generation capacity and electricity transmission infrastructure**”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40
 “(1) The Minister may, in the event of the failure of a market, or in the event of an emergency, or for the purposes of ensuring security of energy supply in the national interest, [**in**] after consultation with the Regulator and the Minister of Finance, by notice in the *Gazette*, make a determination—”; 45
- (c) by the substitution in subsection (1) for paragraphs (a) and (b) for the following paragraphs, respectively: 45
 “(a) [**determine**] that additional electricity or new generation capacity is needed to ensure the [**continued uninterrupted**] optimal supply of electricity; 50
 (b) [**determine the types of energy resources from which**] that new electricity [**must be generated, and the percentages of electricity**”

- “(2) UMlawuli angaqoka umuntu ofanele ukuthi abe ngumxazululi noma umahluleli kube nguye olingisa lengxabano emele yena nokuthi nanoma yisiphi isenzo noma isinqumo esithathwa yilo muntu oqokiwe sithathwa njengesenzo noma isinqumo soMlawuli.”;
- (c) ngokufaka endaweni yesigatshana sesi-(3) lesi sigatshana esilandelayo: 5
 “(3) UMlawuli kufanele abeke, ngokomthetho, inqubo okufanele ilandelwe ekuxazululeni nasekwahluleleni izinkinga kanye nezimali okufanele zikhokhwe.”;
- (d) ngokususa isigatshana sesi-(4); kanye
- (e) nokwengeza ngemuva kwesigatshana sesi-(4) lesi sigatshana esilandelayo: 10
 “(5) Lapho esebenza njengomxazululi, uMlawuli noma umuntu okukhulunywe ngaye esigatshaneni sesi-(2) kufanele akhiphe isinqumo ngalolu daba, ngokubhaliwe, futhi leso sinqumo sibophezela abathintekayo engxabanweni.”.
- Ukuchitshiyelwa kwesigaba 32 soMthetho 4 wezi-2006, njengoba sichitshiyelwe isigaba 16 soMthetho 28 wezi-2007** 15

25. Ngakho-ke isigatshana sama-32 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

- “(1) UMlawuli kumele, ezimweni ezifanele, uma ebona noma uma ethola isikhalazo [noma imibuzo] ephathelene nokuphehlwa kwamandla kagesi, nokwethumela nokwaba [noma] nokuhweba ngogesi, ukuqhuba imakethe, ukusetshenziswa kohlelo, ayophenya ngezikhazazo futhi alungise umbiko wokuqala maqondana nalokhu—
- (a) zokubandlulula okusolwayo okumayelana nohlelo lwemali noma nezimo ezimayelana nokuthola zokungena ezindaweni ezithize; kanye 20
- (b) ezimayelana nezinsolo zokwehluleka kwalowo onelayisense ukuhlonipha imigomo abekelwe yona elayisenseni [; noma].”.

Ukuchitshiyelwa kwesigaba 33 soMthetho 4 wezi-2006, njengoba sichitshiyelwe isigaba 16 soMthetho 28 wezi-2007

26. Ngakho-ke isigaba sama-33 soMthethongqangi sichitshiyelwe— 30
- (a) ngokufaka endaweni yesigatshana soku-(1) sendima (a) le ndima elandelayo:
 “(a) ngaso sonke isikhathi esamukelekile angangena kunoma yisiphi isakhiwo lapho kusetshenzwa khona ngokuhambisa ugesi, noma okusolwa ukuthi kuyenziwa, ukuzohlola izinto zokusebenza, izimpahla zokusebenza, imishini, amabhuku, i-akhawunti noma eminye imibhalo ehambisana nogesi otholakala lapho; kanye.” 35

Ukuchitshiyelwa kwesigaba 34 soMthetho 4 wezi-2006, njengoba sichitshiyelwe isigaba 16 soMthetho 28 wezi-2007

27. Ngakho-ke isigaba sama-34 soMthethongqangi sichitshiyelwe—
- (a) ngokufaka endaweni yesihloko lesi sihloko esilandelayo: 40
 “34. Ugesi owengeziwe, [Uhlelo] uhlelo olusha lokuphehla amandla kagesi kanye nengqalasizinda yokuthumela ugesi”;
- (b) ngokushutheka endaweni yesigatshana soku-(1) emagameni andulela (a) lawa magama alandelayo:
 “(1) UNgqongqoshe, uma kwenzeka imakethe ihluleka, noma esimweni esiphuthumayo, noma ngenjongo yokuqinisekisa ukuphepha kokuphakelwa kwamandla ngokuzuzisa izwe, ngemuva kokubonisana noMlawuli kanye noNgqongqoshe wezeziMali, ngesaziso kwiGazethi, angenza isinqumo—”;
- (c) ngokufaka endaweni yesigatshana soku-(1) endimeni (a) nasendimeni (b) lezi zindima ezilandelayo, ngokulandelayo: 50
 “(a) [anqume] ukuthi ugesi owengeziwe noma uhlelo olusha lokuphehla amandla kagesi luyadingeka ukuqiniseka [ukuthi] ukuphakelwa kukagesi okuyimpumelelo [kuyaqhubeka akuphazamiseki]; 55
 (b) [ukuthola izinhlobo zemithombo yamandla ekumele kutholwe kuphehlwe ugesi kuyona kanye namaphesenti kagesi okumele aphehlwe kuyona] ukuthi kudingeka ingqalasizinda entsha

- that must be generated from such sources]** transmission infrastructure is needed to ensure the optimal supply of electricity;”;
- (d) by the deletion in subsection (1) of paragraphs (d) and (e);
- (e) by the substitution for subsection (2) of the following subsection:
- “(2) A determination referred to in subsection (1)(a) must include provisions dealing with—
- (a) the extent of the new generation capacity required to be established, or electricity required to be produced, pursuant to such determination;
 - (b) the types of energy sources or technologies from which the electricity may be generated and an indication as to the amount of electricity that may be generated from each of such sources or technologies;
 - (c) whether the generator or generators shall be independent power producers or an organ of state;
 - (d) whether the electricity so produced, or a stated portion thereof, must be purchased by a person designated in the determination as the buyer of such electricity;
 - (e) whether the electricity so produced, or a stated portion thereof, may only be sold to the buyer referred to in paragraph (d);
 - (f) where applicable, the conducting of the procurement process for the acquisition of the electricity so produced; and
 - (g) the extent to which the new generation capacity contemplated in paragraph (a) may be established by independent power producers and the electricity so produced supplied to customers pursuant to multiple supply agreements.”;
- (f) by the substitution for subsections (3) and (4) of the following subsections, respectively:
- “(3) A determination referred to in subsection (1)(b) may include provisions dealing with—
- (a) the nature, type and extent of the required electricity transmission infrastructure;
 - (b) whether or not the person who shall manage, maintain or operate the required electricity transmission infrastructure (or engage in any combination of these activities), shall be an organ of state;
 - (c) whether the person who constructs, manages, maintains or operates the required electricity transmission infrastructure shall own that infrastructure;
 - (d) whether the electricity transmission infrastructure, or the electricity supplied by means of such infrastructure, shall be purchased or used by a person designated in the determination as the buyer or user;
 - (e) whether the electricity transmission infrastructure, or electricity supplied by means of the infrastructure, may only be sold to or used by the buyer or user referred to in paragraph (d); and
 - (f) where applicable, the conducting of the procurement process for the establishment of the required electricity transmission infrastructure.
- (4) A determination referred to in subsection (1) may include provisions dealing with any ancillary matter that is necessary or desirable to facilitate the procurement of electricity, new generation capacity or electricity transmission infrastructure, as the case may be.”;
- (g) by the addition after subsection (4) of the following subsections:
- “(5) A determination contemplated in subsection (1)(a) may be combined with a determination contemplated in subsection (1)(b).
- (6) In making a determination in terms of this section, the Minister—
- (a) must have regard to the content of the integrated resource plan and the transmission development plan, as the case may be; and

- yokuthumela ugesi ukuze kuqinisekiswa ukuphakelwa kahle kukagesi;”;
- (d) ngokususa esigatshaneni soku-(1) sezindima ((d) kanye no-(e);
- (e) ngokufaka endaweni yesigatshana sesi-(2) lesi sigatshana esilandelayo:
- “(2) Isinqumo okukhulunywe ngaso esigatshaneni soku-(1)(a) 5
- kufanele sifake imihlinzeko ebheka—
- (a) izinga lohlelo olusha lokuphehla amandla kagesi oludingekayo ukuze kusungulwe, noma ugesi okudingeka ukhiqizwe, ngokulandela lesi sinqumo; 10
- (b) izinghlobo zemithombo yamandla noma ubuchwepheshe ugesi ongaphehlwa ngakho kanye nenkomba yenani likagesi elingaphehlwa kumthombo ngamunye waleyo mithombo noma ubuchwepheshe; 15
- (c) ukuthi isiphehli noma iziphehli zizoba abakhiqizi bamandla abazimele noma isikhungo sikahulumeni; 15
- (d) ukuthi ugesi okhiqizwa kanjalo, noma ingxenye yawo eshiwo, kufanele uthengwe ngumuntu oqokwe kwisinqumo njengomthengi walowo gesi; 20
- (e) ukuthi ugesi okhiqiziwe, noma ingxenye yawo, ingadayiselwa umthengi okukhulunywe ngaye endimeni (d); 20
- (f) laphe kufanele khona, ukwenziwa kwenqubo yokuthengwa kukagesi okhiqizwayo; kanye 25
- (g) nezinga uhlelo olusha lokuphehla amandla kagesi oluhlongozwe endimeni (a) elingasungulwa ngayo ngabakhiqizi bamandla abazimele kanye nogesi okhiqizwe kanjalo ophakelwa abathengi ngokulandela izivumelwano zokuhlinzeka eziningi.”;
- (f) ngokufaka endaweni yezigatshana (3) no (4) lezi zigatshana ezilandelayo, ngokulandelana:
- “(3) Isinqumo okukhulunywe ngaso esigatshaneni (1)(b) singabandakanya imihlinzeko ebheka— 30
- (a) uhlobo kanye nobukhulu bengqalasizinda edingekayo yokuthumela ugesi; 30
- (b) ukuthi ngabe umuntu ozophatha, anakekele noma asebenzise ingqalasizinda edingekayo yokuthumela ugesi (noma enze noma iyiphi inhlanguanisela yale misebenzi), ukuthi uyoba isikhungo sikahulumeni; 35
- (c) ukuthi ngabe umuntu owakha, ophatha, onakekela noma osebenzisa ingqalasizinda yokuthumela ugesi edingekayo uzoba ngumnikazi waleyo ngqalasizinda; 40
- (d) ukuthi ingqalasizinda yokuthumela ugesi, noma ugesi ohlinzekwe ngaleyo ngqalasizinda, uzothengwa noma usetshenziswe umuntu oqokwe esinqumweni njengomthengi noma umsebenzisi; 45
- (e) ukuthi ngabe ingqalasizinda yokuthumela ugesi, noma ugesi ohlinzekwe ngengqalasizinda, ingadayiselwa kuphela noma isetshenziswe umthengi noma umsebenzisi okukhulunywe ngaye endimeni (d); futhi 45
- (f) laphe kufanele khona, ukwenziwa kwenqubo yokuthenga ukuze kusungulwe ingqalasizinda yokuthumela ugesi edingekayo. 50
- (4) Isinqumo okukhulunywe ngaso esigatshaneni soku-(1) singabandakanya imihlinzeko ephathelene nanoma yiluphi udaba oluseceleni oludingekayo noma olufisekayo ukuze kube lula ukuthengwa kukagesi, umthamo wokuphehla ugesi omusha noma ingqalasizinda yokuthumela ugesi, kuye ngokuthi yikuphi.”; futhi 50
- (g) ngokwengeza ngemuva kwesigatshana sesi-(4) lezi zigatshana ezilandelayo:
- “(5) Isinqumo esihlongozwe esigatshaneni soku-(1)(a) 55
- sihlanganiswa nesinqumo esivezwe esigatshaneni soku-(1)(b).
- (6) Ekwenzeni isinqumo ngokwalesi sigaba, uNgqongqoshe—
- (a) kumele abheke okuqukethwe uhlelo oludidiyelwe lwensiza kanye nohlelo lokuthuthukisa ukuthumela ugesi, kuye ngokuthi yiluphi; futhi 60

- (b) may deviate from the integrated resource plan or transmission development plan in an emergency or if it is necessary to do so in the national interest.
- (7) Prior to deviating from the integrated resource plan or transmission development plan as envisaged in subsection (6)(b), the Minister must publish a notice in the *Gazette*, inviting the public to comment on the proposed deviation. 5
- (8) If it is reasonable and justifiable in the circumstances, the Minister may depart from the provisions of subsection (7).
- (9) The Minister has such powers as may be necessary or incidental to giving effect to a determination referred to in subsection (1)(a) or (1)(b), including the power to— 10
- (a) undertake such management and development activities, including entering into contracts, as may be necessary to prepare and conduct procurement processes for the development, construction, commissioning and operation of electricity generation facilities and electricity transmission infrastructure; 15
- (b) purchase, hire or let anything or acquire or grant any right or incur obligations for or on behalf of the State or prospective participant in any relevant procurement process for the purpose of transferring such thing or right to a successful participant; and 20
- (c) subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), issue any guarantee, indemnity or security or enter into any other transaction that binds the State to any future financial commitment that is necessary or expedient for the development, construction, commissioning or effective operation of public or privately owned generation facilities or electricity transmission infrastructure. 25
- (10) The Regulator, in exercising its powers and performing its functions under this Act— 30
- (a) is bound by any determination made by the Minister in terms of subsection (1)(a) or (b); and
- (b) may issue a licence or registration certificate for the activities listed in section 4(a)(i) in the absence of a determination made by the Minister in terms of subsection (1)(a) or (1)(b). 35
- (11) In exercising the powers under this section the Minister is not bound by the State Tender Board Act, 1968 (Act No. 86 of 1968).
- (12) A determination contemplated in this section may establish an energy infrastructure project, which includes not only new generation capacity and new electricity transmission infrastructure, but also other interconnected or related infrastructure, installations, buildings, structures, facilities, systems, services or processes, including gas infrastructure, in which case, subsections (3) and (9) shall, with the necessary changes, apply to such infrastructure, installations, buildings, structures, facilities, systems, services or processes. 40
- (13) The Regulator must, in respect of an energy infrastructure project contemplated in subsection (12), exercise its powers and perform its functions under this Act and any other statute in a coordinated and integrated manner. 45
- (14) The Minister may, in writing, direct the Regulator to conclude a memorandum of understanding with any other regulator in order to facilitate the coordinated establishment of an energy infrastructure project contemplated in subsection (12). 50
- (15) For purposes of this section, ‘electricity transmission infrastructure’ means transmission facilities or any other electricity infrastructure designated by the Minister by notice in the *Gazette* for this purpose, excluding electricity generation facilities.” 55

- (b) angachezuka ohlelweni oludidiyelwe lwensiza noma uhlelo lokuthuthukisa ukuthumela ugesi esimweni esiphuthumayo noma uma kudingekile ukwenza kanjalo ngokubhekelela izidingo zezwe.
- (7) Ngaphambi kokuchezuka ohlelweni oludidiyelwe lwensiza noma uhlelo lokuthuthukisa ukuthumela ugesi njengoba kuhlongozwe esigatshaneni sesi-(6)(b), uNgqongqoshe kufanele ashicilele isaziso kwiGazethi, esimema umphakathi ukuba uphawule ngokuchezuka okuhlongozwayo. 5
- (8) Uma kunomqondo futhi kufaneleka kulezo zimo, uNgqongqoshe angasuka emihlinzekweni yesigatshana sesi-(7). 10
- (9) Ungqongqoshe unawo lawo mandla angadingeka noma ahambisana nokufeza isinqumo okukhulunywe ngaso esigatshaneni soku-(1)(a) noma soku-(1)(b), kuhlenganisa namandla—
- (a) ukwenza leyo misebenzi yokuphatha kanye nokuthuthukisa, okuhlenganisa nokungena ezinkontilekeni, njengoba kungase kudingekile ukuze kulungiswe futhi kwenziwe izinqubo zokuthenga ukuze kuthuthukiswe, kwakhiwe, kugunyazwe futhi kusetshenziswe kwezikhungo zokuphehla ugesi nengqalasizinda yokuthumela ugesi; 15
- (b) ukuthenga, ukuqasha noma ukuvumela noma yini noma ukuthola noma ukunikeza noma yiliphi ilungelo noma ukuzitholela izibopho ngokwakhe noma egameni loMbuso noma ozoba umhlanganyeli kunoma iyiphi inqubo efanele yokuthenga ngenjongo yokudlulisela leyo nto noma ilungelo kumbambiqhaza ophumelele; futhi 20
- (c) ngokuncike eMthethweni Wokuphathwa Kwezimali Zikahulumeni, we-1999 (uMthetho 1 we-1999), ukukhipha noma yisiphi isiqinisekiso, isinxephezelo noma isibambiso noma angene kunoma yimuphi omunye umsebenzi obophezela uMbuso kunoma yisiphi isibopho sezezimali sesikhathi esizayo esidingekile noma esifanele ukuthuthukiswa, ukwakhiwa, ukugunyazwa noma ukusebenza ngempumelelo kwezikhungo zokuphehla ugesi zikahulumeni noma ezizimele noma ingqalasizinda yokuthumela ugesi. 25 30
- (10) Umlawuli, lapho esebenzisa amandla akhe futhi enza imisebenzi yakhe ngaphansi kwalo Mthetho—
- (a) esithathwe uNgqongqoshe ngokwesigatshana soku-(1)(a) noma (b); futhi 35
- (b) angakhipha ilayisensi noma isitifiketi sokubhalisa semisebenzi esohlwini esigabeni sesi-4(a)(i) ngaphandle kwesinqumo esenziwe uNgqongqoshe ngokwesigatshana soku-(1)(a) noma soku-(1)(b).
- (11) Ekusebenziseni amandla ngaphansi kwalesi sigaba uNgqongqoshe akabophekele ngokwe-*State Tender Board Act*, 1968 (Act No. 86 of 1968). 40
- (12) Isinqumo esihlongozwe kulesi sigaba singasungula iphrojekthi yengqalasizinda yamandla, engahlanganisi uhlelo olusha lokuphehla amandla kagesi kuphela nengqalasizinda entsha yokuthumela ugesi, kodwa nezinye izingqalasizinda ezixhumene noma ezihlobene nazo, ukufakwa, izakhiwo, izikhungo, izinhlelo, izinsiza noma izinqubo, okuhlenganisa nengqalasizinda yegesi, lapho, izigatshana esesi-(3) nesesesi-(9), ngezinguquko ezidingekayo, kufanele zisebenze kuleyo ngqalasizinda, ukufakwa, izakhiwo, izikhungo, izinhlelo, izinsiza noma izinqubo. 45 50
- (13) Umlawuli kufanele, mayelana nephrojekthi yengqalasizinda yamandla ehlongozwe esigatshaneni se-(12), asebenzise amandla akhe futhi enze imisebenzi yakhe ngaphansi kwalo Mthetho kanye nanoma yimuphi omunye umthetho ngendlela ehlelekile nedidiyelwe. 55
- (14) UNgqongqoshe, ngokubhala, angayalela uMlawuli ukuba aphele imemorandamu yokusebenzisana nanoma yimuphi omunye umlawuli ukuze kube lula ukusungulwa okudidiyelwe kwephrojekthi yengqalasizinda yamandla ehlongozwe esigatshaneni se-(12).
- (15) Ngokwezinhloso zalesi sigaba, 'ingqalasizinda yokuthumela ugesi' isho izinsiza zokuthumela ugesi nanoma iyiphi enye ingqalasizinda kagesi eqokwe uNgqongqoshe ngesaziso kwiGazethi ngokwale nhloso, ngaphandle kwezikhungo zokuphehla ugesi.'". 60

Insertion of sections 34A and 34B in Act 4 of 2006

28. The following section is hereby inserted in the principal Act after section 34:

“Establishment, duties, powers and functions of Transmission System Operator SOC Limited

34A. (1) Subject to section 35C(1), the Minister of Public Enterprises must establish a juristic person to be known as the “Transmission System Operator SOC Limited” in order to provide an open market platform that shall allow for competitive electricity trading. 5

(2) The duties, powers and functions of the Transmission System Operator SOC Limited referred to in subsection (1) shall include the following: 10

- (a) To be a transmitter;
- (b) system operation;
- (c) to be a market operator; and
- (d) to be a central purchasing agency. 15

Powers and functions of transmitter, system operator, market operator and central purchasing agency

34B. (1) A transmitter must—

- (a) implement infrastructure plans for the transmission network, incorporating the capacity and demand and outlook to ensure reliable grid services to generators and customers; 20
- (b) maintain and operate the transmission grid and coordinate outages;
- (c) develop and implement transmission use of system charges and transmission charges subject to the approval of the Regulator;
- (d) provide non-discriminatory access to the transmission power system to third parties; and 25
- (e) develop the transmission development plan.

(2) A system operator must—

- (a) operate the integrated power system in a safe, secure, efficient and sustainable way; 30
- (b) plan in respect of the development, strengthening, upgrading and refurbishment of the national transmission power system;
- (c) perform forecasting and dispatch scheduling; and
- (d) co-operate with the Minister and any person acting as a procurer in terms of section 34, to facilitate the establishment of any new generation capacity or electricity transmission infrastructure, or acquisition of electricity, that is the subject of a section 34 determination. 35

(3) A market operator must—

- (a) provide for a transparent, non-discriminatory trading platform, approved by the Regulator, for power market participants to trade; 40
- (b) develop a market code and rules, including qualifying criteria for power market participants approved by the Regulator; and
- (c) the market code shall include, but is not limited to, provisions related to the following: 45
 - (i) The different types of markets necessary to ensure effective and secure operation of the industry including both physical and financial transactions between power market participants in the appropriate timescales, to enable the market transactions and regulated transactions; 50

Ukushuthekwa kwezigaba 34A kanye no-34B zoMthetho 4 wezi-2006

28. Ngakho-ke lesi sigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba sama-34:

“Ukusungulwa, imisebenzi, amandla kanye nemisebenzi ye-Transmission System Operator SOC Limited

5

34A. (1) Ngokuncike esigabeni sama-35C(1), uNgqongqoshe Wezamabhizinisi Kahulumeni kufanele asungule igatsha lezomthetho elizokwaziwa ngokuthi “*Transmission System Operator SOC Limited*” ukuze kuhlizekwe inkundla evulekile yemakethe ezovumela ukuhwebelana ngogesi okuncintisanayo.

10

(2) Imisebenzi, amandla kanye nemisebenzi ye-Transmission System Operator SOC Limited okukhulunywe ngayo esigatshaneni soku-(1) izobandakanya okulandelayo:

- (a) Ukuba umthumeli;
- (b) ukusetshenziswa kohlelo;
- (c) ukuba ngumqhubi wemakethe; kanye
- (d) nokuba yisikhungo esiyinhloko sokuthenga.

15

Amandla nemisebenzi yomthumeli, umqhubi wohlelo, umqhubi wemakethe kanye nesikhungo esiyinhloko sokuthenga

34B. (1) UMthumeli kumele—

20

- (a) aqalise izinhlelo zengqalasizinda zenethiwekhi yokuthumela ugesi, ehlanganisa umthamo nesidingo kanye nombono ukuze kuqinisekiswa izinsiza ezithembekile zegridi kubaphehli nakubathengi;
- (b) agcine futhi asebenzise igridi yokuthumela ugesi futhi ahlanganise ukucisha;
- (c) athuthukise futhi aqalise ukusetshenziswa kokuthumela amashaji ohlelo kanye namashaji okuthumela kuncike ekugunyazweni koMlawuli;
- (d) ukuhlizeka ngokufinyelela okungabandlululi ohlelweni lokuthumela amandla kwezinye izindawo; futhi
- (e) athuthukise uhlelo lokuthuthukisa ukuthumela

25

(2) Umqhubi wohlelo kumele—

- (a) asebenzise uhlelo lwamandla oludidiyelwe ngendlela ephephile, evikelekile, ephumelelayo neqhubekayo;
- (b) ahlele maqondana nokuthuthukisa, ukuqinisa, ukuthuthukiswa kanye nokuvuselelwa kohlelo lukazwelonke lokuthumela ugesi;
- (c) enze ukubikezela nokuhlela ukuthunyelwa; futhi
- (d) abambisane noNgqongqoshe kanye nanoma yimuphi umuntu osebenza njengomthengi ngokwesigaba sama-34, ukwenza lula ukusungulwa kwanoma yiluphi uhlelo olusha lokuphehla amandla kagesi, noma ingqalasizinda yokuthumela ugesi, noma ukutholwa kukagesi, okuyinto yesinqumo sesigaba sama-34.

30

(3) Umqhubi wemakethe kufanele—

- (a) ahlinzekele inkundla yokuhweba esobala, engacwasi, egunyazwe uMlawuli, ukuze abahlanganyeli bemakethe yamandla bahwebe;
- (b) athuthukise ikhodi yemakethe kanye nemithetho, okuhlanganisa indlela yokufaneleka yabahlanganyeli bemakethe yamandla egunyazwe uMlawuli; futhi
- (c) ikhodi yemakethe izobandakanya, kodwa ingacwasi kulokho kuphela, imihlinzeko ehlobene nalokhu okulandelayo:

35

- (i) Izinhlobo ezahlukeneyo zezimakethe ezidingekayo ukuze kuqinisekiswa ukusebenza kahle kanye nokusebenza okuphephile kwemboni okuhlanganisa kokubili ukuthengiselana okuphathekayo kanye nezezimali phakathi kwabahlanganyeli bemakethe yamandla esilinganisweni sesikhathi esifanele, ukuze kube khona ukuthengiselana kwemakethe kanye nemisebenzi elawulwayo;

50

55

- (ii) the method of operation, as well as development of systems, processes and procedures for the implementation of these markets;
- (iii) provisions for reconciliation in order to identify imbalances between scheduled and actual production, the consumption of electricity by power market participants, and the allocation of costs of remedial action and penalties where applicable; 5
- (iv) the qualifying criteria for power market participants, including financial and prudential requirements;
- (v) governance of the market code, including mechanisms for power market participants and stakeholders to propose changes to the code; and 10
- (vi) any other aspects necessary for effective and efficient market operation.
- (4) A transparent, non-discriminatory trading platform and trading mechanism for power market participants referred to in subsection (3)(a) is envisaged to be a competitive multi-market structure, which provides for market transactions, physical bilateral transactions and regulated transactions. 15
- (5) A central purchasing agency must— 20
- (a) conclude and enter into transaction agreements as may be necessary for the procurement of electricity, including sufficient capacity and energy supply;
- (b) in line with the Republic's international obligations, agreements and undertakings— 25
 - (i) conclude electricity import agreements that ensure a reliable and stable supply of electricity for customers within the Republic; and
 - (ii) conclude electricity export agreements, having regard to the interests of the Republic over the long term; 30
- (c) in relation to regulated transactions—
 - (i) be the buyer for existing Independent Power Producer power purchase agreements, as well as new Independent Power Producer power purchase agreements, as required by Ministerial determination; 35
 - (ii) conclude power purchase agreements with each Eskom generator to cover capacity payments and ancillary services for a period approved by the Regulator;
 - (iii) conclude vesting contracts with Eskom generators and distribution licensees, as the case requires, approved by the Regulator, to manage the transition to a competitive market; and 40
 - (iv) trade all energy purchased under the legacy independent power producer contracts and act as the balance responsible party on behalf of the legacy independent power producer contracts.”. 45

Amendment of section 35 of Act 4 of 2006, as amended by section 12, and renumbered by section 16, of Act 28 of 2007

29. Section 35 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (d) of the following paragraph: 50

“(d) [codes of practice relating to] the security, operation, use and maintenance of transmission and distribution power systems;”;
- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) the security, operation, use and maintenance of transmission and distribution power systems;”;

 55

- (ii) indlela yokusebenza, kanye nokuthuthukiswa kwezinhlelo nezinqubo zokuqaliswa kwalezi zimakethe;
 - (iii) imihlinzeko yokubuyisana ukuze kutholakale ukungalingani phakathi kokukhiqizwa okuhleliwe nokwangempela, ukusetshenziswa kukagesi ngabahlanganyeli bemakethe kagesi, kanye nokwabiwa kwezindleko zezinyathelo zokulungisa kanye nezinhlawulo lapho kufanele khona;
 - (iv) imibandela yokufaneleka yabahlanganyeli bemakethe yamandla, okuhlanganisa nezimfuneko zezimali kanye nobuhlakani;
 - (v) ukuphathwa kwekhodi yemakethe, okuhlanganisa izindlela zokuthi abahlanganyeli bemakethe yamandla kanye nababambiqhaza baphakamise izinguquko kwikhodi; kanye
 - (vi) nanoma yiziphi ezinye izici ezidingekayo ukuze kuqhutshwe imakethe ngempumelelo.
- (4) Inkundla yokuhweba engafihli, engacwasi kanye nendlela yokuhweba yabahlanganyeli bemakethe yamandla okukhulunywe ngayo esigatshaneni sesi-(3)(a) kucatshangwa ukuthi ibe uhlaka lwezimakethe eziningi oluqhudelanayo, oluhlinzekela ukuthengiselana kwemakethe, ukuthengiselana okuphathekayo kwamazwe amabili kanye nokulawulwa kokuthengiselana.
- (5) Isikhungo esiyinhloko sokuthenga kufanele—
- (a) siphethe futhi singene ezivumelwaneni zokuthengiselana njengoba kungase kudingeke ekuthengeni ugesi, okuhlanganisa umthamo owanele kanye nokuphakelwa ugesi;
 - (b) ngokuhambisana nezibopho zeRiphabhulikhi zamazwe ngamazwe, izivumelwano kanye nezibopho—
 - (i) siphethe izivumelwano zokuthenga ugesi kwamanye amazwe eziqinisekisa ukuphakelwa ugesi okuthembekile nokuzinzile kumthengi wangaphakathi eRiphabhulikhi; futhi
 - (ii) siphethe izivumelwano zokuthekelisa ugesi, ngokubhekelela izintshisekelo zeRiphabhulikhi esikhathini eside;
 - (c) maqondana nokuthengiselana okulawulwayo—
 - (i) sibe umthengi wezivumelwano ezikhona zokuthengwa kwamandla kaMkhiqizi Ozimele, kanye nezivumelwano ezintsha zokuthengwa kwamandla kaMkhiqizi Ozimele, njengoba kudingwa isinqumo sikaNgqongqoshe;
 - (ii) siphethe izivumelwano zokuthengwa kukagesi nesiphehli ngasinye sakwa-Eskom ukuze kukhokhelwe izinkokhelo zamandla kanye nezinsiza ezihambisanayo isikhathi esigunyazwe nguMlawuli;
 - (iii) siphethe izivumelwano zokunika amandla iziphehli zakwa-Eskom kanye namalayisensi okusabalalisa, njengoba kudingeka, agunyazwe uMlawuli, ukulawula ukuguqukela emakethe ebangisanayo; futhi
 - (iv) sihwebe ngawo wonke amandla athengwe ngaphansi kwezinkontileka zomkhiqizi wamandla ozimele wefa futhi sisebenze njengesibophezelo sokubhalansa egameni lenkontileka yomkhiqizi wamandla ozimele wefa.”.

Ukuchitshiyelwa kwesigaba 35 soMthetho 4 wezi-2006, njengoba sichitshiyelwe isigaba 12, futhi njengoba sinezinombolo ezibhalwe kabusha isigaba 16, soMthetho 28 wezi-2007

29. Ngakho-ke isigaba sama-35 soMthethongqangi sichitshiyelwe—

- (a) ngokufaka endaweni yesigatshana sesi-(2) sendima (d) le ndima elandelayo:

“(d) [inqubo yokuziphatha ehambisana] ukuphepha, ukusebenza, ukusetshenziswa kanye nokugcinwa kwezinhlelo zokuthumela nokusabalalisa amandla kagesi;”;
- (b) ngokufaka endaweni yesigatshana sesi-(3) sendima (c) le ndima elandelayo:

“(c) ukuphepha, ukusebenza, ukusebenzisa nokuphatha izinhlelo zokwethula nokwabiwa kwamandla;”;

- (c) by the substitution in subsection (3) for paragraph (i) of the following paragraph:
“(i) the fees to be paid in respect of mediation, arbitration and the settlement of disputes;”;
- (d) by the insertion after subsection (3) of the following subsection: 5
“(3A) The Regulator must, after consultation with the Minister, make rules regarding the content of the transmission development plan, including rules relating to the inclusion in the plan of an analysis of grid connection capacity, reasonable timelines for the expansion and strengthening of the national transmission power system and the estimated cost of the transmission development, strengthening, upgrading and refurbishment envisaged in the plan.”; and 10
- (e) by the deletion in subsection (4) of paragraph (n).

Insertion of sections 35A, 35B and 35C in Act 4 of 2006

30. The following sections are hereby inserted in the principal Act after section 35: 15

“Delegation and assignment

- 35A.** (1) The Minister may, subject to such conditions he or she may impose, in writing, delegate any power conferred on him or her under this Act, except a power to make regulations, and may assign any duty so imposed on him or her, to the Director-General or any other officer in the Department. 20
- (2) The Minister is not divested of any power or exempted from any duty delegated or assigned in terms of subsection (1).
- (3) The Minister may at any time—
- (a) amend or withdraw a delegation or assignment made in terms of subsection (1); or 25
- (b) subject to subsection (4), withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1).
- (4) A decision made by a delegatee or assignee may not be withdrawn in terms of subsection (3)(b) where it confers a right or entitlement on any third party. 30

Offences and penalties

- 35B.** (1) Any person who—
- (a) contravenes the provisions of section 7(1); 35
- (b) fails to comply with a direction issued in terms of section 4(b)(iiA)(bb);
- (c) obstructs or hinders any person authorised in terms of section 33(1) in the exercise of powers under section 33;
- (d) makes any false or misleading statement to the Regulator in connection with any matter contemplated in this Act; or 40
- (e) without lawful authority, damages, removes or destroys any transmission, distribution or reticulation cable, equipment or infrastructure, shall be guilty of an offence.
- (2) Any person who is convicted of an offence by a court of law referred to in subsection (1) shall be liable to a fine not exceeding R1 000 000,00 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment. 45
- (3) Despite anything to the contrary contained in any other law, a Magistrates Court has jurisdiction to impose any penalty provided for in this Act. 50

- (c) ngokufaka endaweni yesigatshana sesi-(3) sendima (i) le ndima elandelayo:
“(i) Imali ezokhokhelwa, ukuxazulula nokwahlulela imibango;”;
- (d) ngokushutheka ngemuva kwesigatshana sesi-(3) lesi sigatshana esilandelayo:
“(3A) U~~Mlawuli~~ kufanele, ngemva kokubonisana noNgqongqoshe, enze imithetho ephathelene nokuqukethwe kohlelo lokuthuthukisa ukuthumela, okuhlanganisa nemithetho ephathelene nokufakwa ohlelweni lokuhlaziya komthamo wokuxhunywa kwegridi, izikhathi ezifanele zokunwetshwa kanye nokuqiniswa kohlelo lukazwelonke lokuthumela ugesi kanye nesilinganiso sezindleko zokuthuthukiswa kokuthumela, ukuqinisa, ukuthuthukiswa kanye nokulungiswa kabusha okuhlongozwe ohlelweni.”; futhi
- (e) ngokususa isigatshana sesi-(4) sendima (n).

Ukushuthekwa kwezigaba 35A, 35B kanye no-35C zoMthetho 4 wezi-2006

30. Ngakho-ke izigaba ezilandelayo zishuthekwe kuMthethongqangi ngemuva kwesigaba sama-35: 15

“Ukudlulisa amandla nokwabela

- 35A. (1) UNgqongqoshe, kuncike kuleyo mibandela angayibeka, ngokubhala, angadlulisa noma yimaphi amandla anikezwe wona ngaphansi kwalo Mthetho, ngaphandle kwamandla okwenza imithethonqubo, futhi anganika uMqondisi-Jikelele noma yinoma yisiphi esinye isikhulu eMnyangweni noma yimuphi umsebenzi anikezwe wona. 20
- (2) UNgqongqoshe akaphucwa noma yimaphi amandla noma akakhululwa kunoma yimuphi umsebenzi awuphathisiwe noma awunikeziwe ngokwesigatshana soku-(1). 25
- (3) UNgqongqoshe nganoma yisiphi isikhathi—
- (a) angachibiyela noma ahoxise ukudluliswa kwamandla noma ukunika umsebenzi okwenziwe ngokwesigatshana soku-(1); noma
- (b) ngokuncike esigatshaneni sesi-(4), angahoxisa noma achibiyela noma yisiphi isinqumo esithathwe umuntu osebenzisa amandla noma owenza umsebenzi awunikeziwe ngokwesigatshana soku-(1). 30
- (4) Isinqumo esithathwe yinxusa noma owabelwe umsebenzi angeke sihoxiswe ngokwesigatshana sesi-(3)(b) laphe sinikeza ilungelo noma amalungelo nganoma yimuphi umuntu wesithathu.

Amacala nezinhlawulo

- 35B. (1) Noma yimuphi umuntu— 35
- (a) ophula imihlinzeko yesigaba sesi-7(1);
- (b) ohluleka ukuthobela isiyalelo esikhishwe ngokwesigaba sesi-4(b)(iiA)(bb);
- (c) othiya noma ovimbela noma yimuphi umuntu ogunyazwe ngokwesigaba sama-33(1) ekusebenziseni amandla ngaphansi kwesigaba sama-33; 40
- (d) owenza noma isiphi isitatimende esingamanga noma esidukisayo kuMlawuli maqondana nanoma yiluphi udaba oluhlongozwe kulo Mthetho; noma
- (e) ngaphandle kwegunya elisemthethweni, owonakalisa, osusa noma ocekele phansi noma iyiphi intambo yokuthumela, yokusabalalisa noma yokukhipha, izinto zokusebenza noma ingqalasizinda; uzakuba necala. 45
- (2) Noma yimuphi umuntu olahlwe icala yinkantolo yomthetho okukhulunywe ngayo esigatshaneni soku-(1) uzobhekana nenhlawulo engeqile ku-R1 000 000,00 noma agqunywe ejele isikhathi esingeqile eminyakeni emihlanu noma kokubili inhlawulo nokuboshwa. 50
- (3) Ngaphandle kwanoma yini ephambene equkethwe kunoma yimuphi omunye umthetho, iNkantolo Yezimantshi inegunya lokubeka noma iyiphi inhlawulo ehlinzekiwe kulo Mthetho. 55

(4) Any person who, in any manner, without lawful authority, acquires or receives into his possession from any other person transmission, distribution or reticulation cable, equipment or infrastructure without having reasonable cause for believing, at the time of such acquisition or receipt, that such transmission, distribution or reticulation cable, equipment or infrastructure is the property of the person from whom he acquires or receives it or that such person has been duly authorized by the owner thereof to deal with it or dispose of it, shall be guilty of an offence.

5

(5) Any person who is convicted of an offence referred to in subsection (4) shall be liable to a fine not exceeding R5 000 000,00 or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment.”.

10

Transitional provisions

35C. (1) From the effective date of this Act, until the date that the Transmission System Operator SOC Limited referred to in section 34A(1) is established, which period shall not be longer than five years, the National Transmission Company South Africa SOC Limited—

15

- (a) is for all purposes deemed to be the Transmission System Operator SOC Ltd;
- (b) must perform the duties, powers and functions of the Transmission System Operator SOC Ltd; and
- (c) in exercising its duties, must do so in a manner that is independent and ensures fair and equitable treatment of all system users.

20

(2) During the period of transition referred to in subsection (1), the Regulator shall exercise regulatory oversight and facilitate the transition to a competitive market.

25

(3) Notwithstanding the provisions of subsection (1), the Regulator must, subject to the conditions determined by the Regulator, upon application by the National Transmission Company South Africa SOC Limited and after satisfying itself regarding the appropriateness thereof, issue the relevant licence to the National Transmission Company South Africa SOC Limited for the performance of the duties, powers and functions of the Transmission System Operator SOC Ltd as provided for in section 34A(2).”.

30

Amendment of arrangement of sections in Act 4 of 2006

31. The arrangement of sections after the long title of the principal Act is hereby amended—

35

- (a) by the insertion after “2. Objects of Act” of the following:
“**2A.** Application of Act”;
- (b) by the insertion after “17. Revocation of licence on application” of the following:
“**17A.** Revocation and deregistration”;
- (c) by the substitution for “24. Rights over streets” of the following:
“**24.** Rights over roads or streets”;
- (d) by the substitution for “34. New generation capacity” of the following:
“**34.** Additional electricity, [New] new generation capacity and electricity transmission infrastructure”;
- (e) by the insertion after “34. Additional electricity, new generation capacity and electricity transmission infrastructure” of the following:

40

45

(4) Noma yimuphi umuntu, nganoma iyiphi indlela, ngaphandle kwegunya elisemthethweni, ozuza noma othola esandleni sakhe kunoma yimuphi omunye umuntu intambo yokuthumela, yokusabalalisa noma yokukhipha, izinto zokusebenza noma ingqalasizinda ngaphandle kwesizathu esizwakalayo sokukholwa, ngesikhathi sokutholwa noma irisidi, ukuthi leyo ntambo yokuthumela, yokusabalalisa noma yokukhipha, izinto zokusebenza noma ingqalasizinda iyimpahla yomuntu ayithenga noma ayithole kuye noma lowo muntu egunyazwe ngokusemthethweni umnikazi wayo ukuthi ayisebenze noma ayilahle, uyoba unecala.

(5) Noma yimuphi umuntu olahlwe icala okukhulunywe ngalo esigatshaneni sesi-(4) uyobhekana nenhlawulo engeqile ku-R5 000 000,00 noma agqunywe ejele isikhathi esingeqile eminyakeni eyishumi noma abhekane nako kokubili inhlawulo nokugqunywa ejele.”.

Imihlinzeko yesikhashana

35C. (1) Kusukela ngosuku lokuqala kokusebenza kwalo Mthetho, kuze kube usuku lapho i-*Transmission System Operator SOC Limited* okukhulunywe ngayo esigabeni sama-34A(1) iyasungulwa, isikhathi esingeqile sibe ngaphezu kweminyaka emihlanu, i-*National Transmission Company South Africa SOC Limited*—

(a) ingeyazo zonke izinhloso ezithathwa njenge-*Transmission System Operator SOC Ltd*;

(b) kumele yenze imisebenzi futhi isebenzise amandla e-*Transmission System Operator SOC Ltd*; futhi

(c) ekwenzeni imisebenzi yayo, kufanele yenze lokho ngendlela ezimele futhi eqinisekisa ukuphathwa ngendlela efanele nelinganayo kwabo bonke abasebenzisi bohlelo.

(2) Ngesikhathi soguquko okukhulunywe ngalo esigatshaneni soku-(1), uMlawuli uzosebenzisa ukugada ngokomthetho futhi enze kube lula ukuguqukela emakethe ebangisanayo.

(3) Naphezu kwemihlinzeko yesigatshana soku-(1), uMlawuli kufanele, kuncike kwimibandela enqunywe nguMlawuli, lapho isicelo se-*National Transmission Company South Africa SOC Limited* futhi emva kokuzenelisa mayelana nokufaneleka kwalokho, akhiphe ilayisensi efanele kwi-*National Transmission Company South Africa SOC Limited* ekwenzeni imisebenzi nasekusebenziseni amandla e-*Transmission System Operator SOC Ltd* njengoba kuhlinzekiwe esigabeni sama-34A(2).”.

Ukuchitshiyelwa kokuhleleka kwezigaba zoMthetho 4 wezi-2006

31. Ngakho-ke ukuhlelwa kwezigaba ngemuva kwesihloko eside soMthethongqangi kuchitshiyelwe—

(a) ngokushutheka ngemuva kwesigaba “2. Izinjongo zalo Mthetho” lokhu okulandelayo:

“**2A.** Ukusetshenziswa koMthetho”;

(b) ngokushutheka ngemuva kwesigaba “17. Ukuchithwa kwesicelo selayisense” lokhu okulandelayo:

“**17A.** Ukuhoxiswa kanye nokwesulwa kokubhaliswa”;

(c) ngokufaka endaweni yesigaba “24. Amalungelo amayelana nemigwaqo” lokhu okulandelayo:

“**24.** Amalungelo amayelana nemigwaqo”;

(d) ngokufaka endaweni yesigaba “34. Uhlelo olusha lokuphehla amandla kagesi” lokhu okulandelayo:

“**34.** Ugesi owengeziwe, [Uhlelo] uhlelo olusha lokuphehla amandla kagesi kanye nengqalasizinda yokuthumela ugesi”;

(e) ngokushutheka ngemuva kwesigaba “34. Ugesi owengeziwe, uhlelo olusha lokuphehla amandla kagesi kanye nengqalasizinda yokuthumela ugesi” lokhu okulandelayo:

- “**34A.** Establishment, duties, powers and functions of Transmission System Operator SOC Ltd;
34B. Powers and functions of transmitter, system operator, market operator and central purchasing agency”; and
(f) by the insertion after “35. Regulations, rules, guidelines, directives and codes of conduct and practice” of the following: 5
“**35A.** Delegation and assignment
35B. Offences and penalties
35C. Transitional provisions”.

Substitution of long title of Act 4 of 2006, as amended by section 13 of Act 28 of 2007 10

32. The following long title is hereby substituted for the long title of the principal Act:
“**To amend the Electricity Regulation Act, 2006 so as to delete, amend, and insert certain definitions; to provide for the application of the Act; to provide for the National Energy Regulator to consider applications for licences and the issue of licences; to provide for revocation and deregistration of licences; to provide for additional electricity, new generation capacity and electricity infrastructure; to provide for the establishment, duties, powers and functions of the Transmission System Operator SOC Ltd and transitional measures; to provide for an open market platform that allows for competitive electricity trading; to assign the duties, powers and functions of the Transmission System Operator SOC Ltd to the National Transmission Company South Africa SOC Ltd; to provide for delegation and assignment; to provide for offences and penalties; and to provide for matters connected therewith.**” 15
20

Short title and commencement

33. This Act is called the Electricity Regulation Amendment Act, 2024, and comes into operation on a date determined by the President. 25

“34A. Ukusungulwa, imisebenzi, amandla kanye nemisebenzi ye-*Transmission System Operator SOC Ltd*;

34B. Amandla nemisebenzi yomthumeli, umqhubi wohlelo, umqhubi wemakethe kanye nesikhungo esiyinhloko sokuthenga”; kanye

- (f) ngokushutheka ngemuva kwesigaba “35. Imithetho, izimiso, izinqubomgomo, iziyalo nendlela yokuziphatha nokuqhuba umsebenzi.” lokhu okulandelayo: 5

“35A. Ukudlulisa amandla nokwabela

35B. Amacala nezinhlawulo

35C. Imihlinzeko yesikhashana”. 10

Ukufaka endaweni yesihloko eside soMthetho 4 wezi-2006, njengoba uchitshiyelwe isigaba 13 soMthetho 28 wezi-2007.

32. Ngakho-ke lesi sihloko eside esilandelayo sifakwe endaweni yesihloko eside soMthethongqangi:

“Ukuchibiyela uMthetho wokuLawulwa kukaGesi, wezi-2006 ukuze 15
kususwe, kuchitshiyelwe kufakwe izincazelo ezithile; ukuhlinzekela ukusetshenziswa koMthetho; ukuhlinzekela ukuthi uMlawuli kaGesi waZwelonke acubungule izicelo zamalaysensi kanye nokukhishwa kwamalaysensi; ukuhlinzekela ukuhoxiswa kanye nokwesulwa kokubhaliswa kwamalaysensi; ukuhlinzekela ugesi owengeziwe, uhlelo 20
olusha lokuphehla amandla kagesi kanye nengqalasizinda kagesi; ukuhlinzekela ukusungulwa, imisebenzi, amandla kanye nemisebenzi ye-*Transmission System Operator SOC Ltd* kanye nezinyathelo zesikhashana; ukuhlinzekela ukuba khona kwenkundla yemakethe evulelekile evumela ukuhwebelana ngogesi ngokuncintisana; ukunikeza imisebenzi, amandla 25
kanye nemisebenzi ye-*Transmission System Operator SOC Ltd* kwi-*National Transmission Company South Africa SOC Ltd*; ukuhlinzekela ukuphathiswa nokwabela; ukuhlinzekela amacala kanye nezinhlawulo; kanye nokuhlinzekela izindaba ezihlobene nalokho.”.

Isihloko esifushane kanye nokuqala ukusebenza koMthetho 30

33. Lo Mthetho ubizwa ngokuthi uMthetho wokuChibiyela ukuLawulwa kukaGesi, wezi-2024, futhi uqala ukusebenza ngosuku olunqunywe uMongameli.