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**POLICIES ON PARTICIPATION IN THE CONSULTATIVE PROCESS FOR
THE ESTABLISHMENT OF REGIONAL ELECTRICITY DISTRIBUTORS
(REDS)**

1. INTRODUCTION

1.1 In compliance with Government policies, the Namibian Electricity Supply Industry (ESI) is currently undergoing fundamental changes especially on the electricity distribution side. Various Regional Electricity Distribution companies (REDS) are established for the various regions into which Namibia has been divided for this purpose. Altogether five REDs will eventually be operational. They are:

- Nored (already in existence)
- Central Northern Red (CENORED)
- Central Red
- Erongo Red
- Southern Red

1.2 Rather than following political boundaries, these REDs are established for regions determined by means of electricity network characteristics. The REDs will incorporate all existing distribution and supply electricity operators within their specific region.

1.3 The process of establishing the REDs is a consultative process and entail widespread communication, negotiation and consultation with all stakeholders and the communities involved. This raises the question as to who should and/or may partake in the establishment of the REDs. It is, of course, impossible to allow the whole community to participate and therefore the REDs establish mainly two types of committees: (1) a policy/shareholding committee, and (2) a technical/advisory committee.

1.4 The main function of the technical/advisory committee is to discuss all relevant issues and to make recommendations thereon to the policy/shareholders committee. Thus the technical/advisory committee should be as representative as possible of stakeholders/operators in distribution and supply sector. Further, these representatives should preferably have technical experience/expertise/knowledge of the functions of the body which they represent and/or the electricity distribution and supply industry.

1.5 The main function of the policy/shareholding committee is to consider recommendations by the technical/advisory committee and to give policy guidance to the establishment of the RED. It is advised that all persons (corporate or unincorporated) who have a right or potential right to become shareholders of

the future RED be allowed to be represented on the policy/shareholding committee.

1.6 Further in this document the detailed criteria for representation on these committees are given.

2. VALIDATION FOR CRITERIA FOR PARTICIPATION IN THE REDS PROCESS

2.1 Article 18 of Namibian Constitution

“Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.”

Government is subject to the above constitutional right and thus as part of Government’s obligation to act fairly and reasonably it is obligated to act in a consultative and transparent manner.

2.2 Energy White Paper

There are numerous references in Energy White Paper (which was approved by Parliament) on the obligations resting on stakeholders in the electricity sector to act transparent, consultative and to co-opt participation in the restructuring of the ESI. Below only a few examples are quoted (our highlighting):

“Key challenges for the Namibian electricity sector are:

- increasing sector efficiency;
- improving access to electricity in a sustainable manner, particularly in rural areas;
- increasing security of supply, while taking into account the risk of stranded investments;
- promotion and development of the sector as a key vehicle for investment and growth;
- ensuring environmental and socio-economic sustainability;
- alleviation of resource constraints in the electricity sector; and
- development of an efficient and appropriate governance framework and structure.

In addressing these challenges, government is committed to consultation with stakeholders, particularly related to issues like industry restructuring, electricity pricing and financing issues.”

“The restructuring shall address the scope for increased private sector participation, reorganisation of electricity distribution, integration of the Namibian electricity supply industry with the rest of Southern Africa, and the possibility for competition in electricity generation and supply, particularly by encouraging independent power producers to enter

the market. This will create an enabling environment for both public and private involvement in the electricity supply industry.”

“Electricity supply industry restructuring should contribute to increased transparency of sector operations and thereby to customer satisfaction and investor confidence. A restructured electricity distribution sector is seen as a prerequisite for other policy initiatives aimed at social upliftment, investment and growth, and effective sector governance. The restructuring process will be managed by the Ministry.”

“It is critical that Namibia take advantage of current opportunities to encourage participation of Namibians (and in particular black Namibians) in the economic structure of the electricity industry. Options for encouraging economic empowerment may include the explicit consideration of empowerment targets in the licensing of independent power projects and granting of distribution franchises, among other considerations.”

“Government will promote a dialogue with private investors & financiers with a view to facilitating economically viable & competitive investments in the electricity sector.”

“Government will co-operate with the ESI, the private sector & Namibian educational institutions, to create a sufficiently skilled human resource base to sustain the management, operation & development of the electricity sector”

3. TRADITIONAL ROLES OF PRIVATE SECTOR IN ESI

To date private sector participation in the ESI mainly involved:

- Provision of consultancy services
- Procurement & installation of electrical infrastructure by private service providers
- Management Contracts by service providers
- Farmers Co-operative Schemes

4. PROS AND CONS OF PRIVATE SECTOR PARTICIPATION

4.1 Advantages

Advantages to be gained from private sector participation are:

- Injection of investment & operational capital
- Injection of technical & business skills
- Improved efficiency leads to greater commercial gains
- Efficient incorporation of existing operators in the REDs
- Promotion of black economic empowerment
- Promotion of entrepreneurship
- Compliance with Energy White Paper policies and constitutional rights

4.2 Disadvantages

Possible disadvantages of private sector participation are:

- Insufficient attention by private sector to social objectives
- Possible job losses in private sector to gain greater efficiency
- Optimal tariffs may be higher than current level due to higher return on investments for private sector (due to risk element) than for public sectors which may mean a higher tariff to accommodate this higher rate of return

5. GOVERNMENT POLICIES ON PARTICIPATION IN REDS CREATION

- 5.1 Having duly considered participation in the REDs creation, the Ministry of Mines and Energy developed the criteria and principles for such participation as set out hereafter. This will constitute our official policy on this matter and we request all participants involved in the REDs establishment processes to adhere thereto.
- 5.2 As a first step a prospective RED should distinguish between the consultative process and the eventual shareholding in the RED. Bodies and persons consulted during the consultative phase of REDs creation are not all bodies/persons who will be entitled to have shareholding in the REDs. The latter (ie who the shareholders of the RED eventually will be) will depend on various factors and requirements for shareholding as developed and negotiated by the prospective RED during the consultative phase. For example, prospective REDs may on their shareholding/policy committee give representation to farmers' cooperative schemes. During the consultative phase such cooperatives may decide to sell their assets to the REDs and not to take up shareholding. As the shareholding/policy committee eventually is transformed into a committee consisting of the nominated first directors of the RED such cooperatives will discontinue participation on the original shareholding/policy committee since they will not be shareholders and will not have had nominated directors (or have a right to do so).
- 5.2 The criteria and principles given below for participation in the REDs creation constitute the minimum requirements which the Ministry of Mines and Energy directs on this matter. A prospective RED can consult wider than these minimum requirements (this is within the discretion of the RED).
- 5.3 As regards the technical/advisory committee, persons/bodies complying with at least one of the following requirements should be allowed to participate:
- (a) A person who is the holder of a valid distribution and/or supply licence; or
 - (b) A person who is the owner of distribution and/or supply assets of a typical distribution/supply nature generally required to be licensed in terms of the Electricity Act; or
 - (c) A person who has a statutory and/or contractual right to supply electricity; or

- (d) A person who has from a Governmental policy point of view a right to participate and observe but who does not have voting rights (Ministry of Mines and Energy, Ministry of Local and Regional Government and Housing, Electricity Control Board, consultants to these institutions, consultants to the RED, etc).

5.4 As regards the shareholding/policy committee, the Ministry of Mines and Energy instructs at least the participation of persons/bodies who are potential shareholders in the prospective right. They are typically:

- (a) persons who have distribution/supply assets to be transferred to the RED;
 (b) persons who have a statutory and/or contractual right to supply electricity.

In addition to the above the same category specified in item (d) of paragraph 5.3.

6. ADDITIONAL REMARKS ON PRIVATE SECTOR PARTICIPATION IN REDS CREATION

6.1 In many REDs areas private sector service providers supply electricity to communities in terms of management/service level contracts concluded with the party who has the original right to supply electricity. As regards these service providers the following are recommended:

- The owner of assets appoint representatives on committees unless the service provider has a right to be represented itself on one of the REDs committees in terms of Government policies;
- It is the duty of such owner of assets to involve and/or update the private operator on latest developments and this should be done regularly;
- Contractual conditions must be complied with;
- RED committees should duly consider the value of private operators' operational assets & skills.

6.2 As regards the farmers co-operatives schemes established in many REDs areas and operating in terms of electricity licences, such schemes:

- Should be represented on all committees;
- The RED and the cooperative must negotiate on the various manners in which the scheme can be cooperated into the RED;
- ECB will continue licensing new schemes until such time as the REDs are fully operational and they are incorporated into the REDs.

6.3 After the establishment of the various REDs the following Government policies shall prevail:

- Only one distribution license per geographic RED area
 - No "islands"
 - No licences to new entities

- Farmers Co-operatives to be absorbed by RED through one of the following ways:
 - Sells assets to RED at an agreed price (no shareholding – purely sale of asset agreement) and farmer scheme disappears. RED becomes service provider to farmers in scheme;
 - Farmers cooperative exchanges assets for an agreed shareholding in the RED based on formula applying to all other potential shareholders;
 - Farmers cooperative continues to operate on its own in terms of a service level agreement with the RED.

7. CONCLUSION

Government, through the Ministry of Mines and Energy and the Electricity Control Board, will continue to monitor and assist in the establishment of the REDs. We advise that our policy of participation in the REDs be implemented as set out herein and that all potential participants qualifying in terms of this policy be invited in writing to attend REDs meetings and receive all documentation related to such meetings. Should any RED have queries regarding this policy it should be addressed to the CEO of the Electricity Control Board to whom the Ministry of Mines and Energy has delegated this project.

MINISTER OF MINES AND ENERGY
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