



INFORMATION ON THE NAMIBIAN ELECTRICITY INDUSTRY

6. The Electricity Bill, 2007

Article 6 of 6, compiled by the Electricity Control Board (ECB) to clear misconceptions about REDs & to explain related electricity matters.



INTRODUCTION

During the late 1990s an extensive review was done on the Namibian energy sector. This review culminated in the Energy White Paper of 1998. The White Paper, amongst others, recommended the restructuring of the Namibian electricity supply industry (ESI). In order to achieve such regulation the outdated Electric Power Proclamation of 1922 was repealed and the Electricity Act of 2000 was promulgated to replace the Proclamation. The Electricity Act provided for the establishment of an independent statutory regulator, the Electricity Control Board (ECB) which was tasked with regulating the ESI. For the first time a licensing system for electricity operators and methodical calculation and setting of electricity tariffs were introduced.

Within the first year after the promulgation of the Electricity Act it became evident that the Act did not contain sufficient enabling provisions for the issuing of technical regulations. Except for the national utility, NamPower (Pty) Ltd, electricity supply was mainly the domain of local government¹ and thus technical details were regulated by means of municipal by-laws. In view thereof that an Act of Parliament began regulating electricity on national level, it became evident that the municipal by-laws were not efficient and would have to be replaced by national technical electricity regulations which would apply to all electricity licensees and not only local government. So began the drafting of an amendment Bill to deal with this matter. But it soon became apparent that far more reforms were required and that the Electricity Act 2000 should be replaced in total.

At more or less the same time, the restructuring of the electricity distribution industry (EDI), by means of the establishment of regional electricity distribution companies (REDs), began in earnest. The latter evidently required additional revision of the Electricity Act 2000 in order to facilitate the establishment of the REDs¹. Finally, since the coming into operation of the Electricity Act 2000, various loopholes, regulatory deficiencies and a need to adapt and allow for new policy developments in the ESI necessitated a thorough and comprehensive review of the Act.

During the first five years of the operation of the Electricity Act 2000 it became evident that reform was required not only to achieve performance improvement but also to match outside changes nationally, regionally and internationally. Such reform would aim at –

- Increasing private sector participation to mobilize finance;
- Promoting competition among sector entities;
- Increasing the sector's efficiency;
- Increasing the penetration and improve the reliability and quality of electricity supply;
- Ensuring reasonable and affordable tariffs.

This article focuses on legal regulatory reforms but there are also various other important projects and studies taking place in Namibia. This year alone, the ECB is involved in studies on demand side management, an Independent Power Producer framework, the economic impact of rising tariffs and the introduction of pro-poor policies, to name but a few.

THE ENERGY CRISIS

As with other member countries of the Southern Africa Power Pool (SAPP), Namibia is approaching

a situation of supply shortages with serious electricity supply shortfalls. At the same time budgetary constraints hamper investments needed for new generating capacity and transmission and distribution systems. Since electricity is a vital ingredient for economic and social development, Namibia had to revisit its power sector reform processes with the specific goal of creating an enabling environment to attract private investments into its power sector and to rationalize the industry.

As Namibia, to a large extent, depends on electricity to achieve development outcomes set out in Vision 2030 it is imperative for it to achieve the following two interrelated goals:

- (i) Increase efficiency to decrease cost (which is one of the main aims of the establishment of the REDs); and
- (ii) Create an environment that is encouraging to private sector investment.

The Electricity Bill, 2007 aims at ensuring the continued cost-effective and efficient functioning of the ESI and is expedited on an urgent basis in order to ensure that reform and goals are achieved.

SALIENT FEATURES OF THE BILL

At the outset it should be made clear that the Electricity Act (and its anticipated replacement) is an enabling Act. Detailed subordinate regulation is done by means of regulations, enforceable methodologies, licence conditions and rules of the Regulator.

EXPANSION OF REGULATORY FRAMEWORK

The Electricity Act 2000 lacks sufficient regulatory measures for the ECB and/or the Minister of Mines and Energy (under whose auspices the ECB and the ESI fall) to govern the industry. For example, currently only licensees are regulated. A person or body who is not a licensee (for example electricity customers and electricity infrastructure developers) falls outside the scope of the Act. Should a fatal accident happen, or an unsafe situation exists, under the control of a customer, the Regulator is powerless.

No provision is made in the Electricity Act 2000 for essential market regulation in the form of grid and transmission codes, market rules, private investment protection, pricing mechanisms, etc. The latter is already proving to pose serious obstacles to the development of new generation capacity in view of the uncertainty and risks the absence thereof creates.

ALIGNMENT OF LOCAL GOVERNMENT LEGISLATIVE REGULATION OF ELECTRICITY

Under the Electricity Act 2000, the EDI inherited the dichotomy of having local government EDI players being regulated under both local government legislation and the Electricity Act. For example, electricity tariffs must first be submitted via local government budgets to the Minister of Local Government for approval. Thereafter tariffs are submitted to the ECB for approval. Once approved by the ECB, control is taken again by local government legislation which determines the requirements for publication of such tariffs before they can become validly enforceable. As this dual (and often contradictory) regulation is intolerable, it was approved by Cabinet that electricity should exclusively be regulated under national legislation.

TRADING OF ELECTRICITY

Currently NamPower has a monopoly on the generation and import of electricity. A single buyer study has been conducted and has, in principle, been accepted to be introduced in Namibia in the near future. On the longer term a multi buyer model/competitive pool is envisaged. The Electricity Act 2000 does not provide for these types of operators. The Bill provides for the future issuing

of trading licences. Once policies on the introduction of a single market framework have been agreed upon, it would be possible to issue the required licences to allow for trading on such market.

ENFORCEMENT

The Electricity Act 2000 lacks in giving the Regulator sufficient investigative and enforcement powers to ensure that electricity legislation is being complied with. The Bill attempts to rectify this deficiency by extending the ECB's investigative and enforcement powers.

TARIFFS

The Namibian Government expressed its commitment to provide affordable (cost reflective) and reliable electricity to all citizens. The Namibian Cabinet took a decisive stance that electricity tariffs should be cost-reflective by 2011. Some refinement was done on tariff regulation to allow for the more efficient regulation of tariffs.

STANDARDS ON QUALITY OF SUPPLY AND SERVICE

The above is another field where the Electricity Act 2000 is lacking in regulatory powers. The new Bill allows the ECB to set standards for quality of supply and service in the electricity industry and to make such standards compulsory. Penalties may be imposed for non-compliance.

CONCLUSION

As explained herein, there has been serious rethinking of power sector policies and reform since the release of the Energy White Paper of 1998 and the promulgation of the Electricity Act 2000. The Namibian ESI faces serious challenges – many of which are unique to Namibia and necessitate creative solutions. But laws and frameworks alone do not guarantee success. While electricity reform is an economic process, it is also unavoidable social and political. To be successful it requires a measure of public acceptance, which rests on public perceptions of costs and benefits, promises made, transparency, fairness and honesty. For example, a real risk is that tariff increases and payment enforcement overshadow real term benefits, improved service and public benefits. Real challenges lie ahead to ensure public buy-in in the proposed reforms and to continue to encourage and promote confidence in the sector. However, the Regulator and Government are confident that the new Electricity Bill 2007 will establish a sound and progressive regulatory framework for the electricity sector.

ELECTRICITY CONTROL BOARD

VISION: To be recognised as a leading regulator for achieving optimum viability and competition in the Namibian energy industry.

MISSION: To regulate and control the Namibian ESI in the interest of all stakeholders with regard to price, quality and reliability.

VALUES:

Professionalism: To conduct every task to a standard of excellence and to maintain the highest level of technical competence and personal integrity/efficiency so as to ensure the satisfaction of all stakeholders.

Integrity: To be accountable and to act in accordance with government policy and accept full responsibility for all outcomes; to be transparent, open, honest and fair in all dealings and communications with stakeholders.

Innovation: To innovate through learning, teamwork and knowledge sharing in order to remain competitive in the market and to continue to deliver excellent service.

Sustainability: To ensure the endowment of Namibia's energy resources are available to present and future generations by considering our economic, environmental and social responsibility.

¹ The latest political decision on this matter is that REDs should be removed from the Electricity Bill, 2007, and that an additional bill, dealing separately with REDs only, should be drafted.