



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 16 February 2011

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## Government Notice

### MINISTRY OF MINES AND ENERGY

No. 13 2011

#### ELECTRICITY REGULATIONS: ADMINISTRATIVE: ELECTRICITY ACT, 2007

Under section 43 of the Electricity Act, 2007 (Act No. 4 of 2007) I have -

- (a) made the regulations set out in the Schedule; and
- (b) repealed the Electricity Regulations: Administrative published in Government Gazette No. 2371 of 12 July 2000.

**I. KATALI**

**Minister of Mines and Energy**

Windhoek, 1 February 2011

### SCHEDULE

#### ELECTRICITY REGULATIONS: ADMINISTRATIVE ARRANGEMENT OF REGULATIONS

1. Definitions
2. Functions of Board
3. Application for issue, renewal, amendment or transfer of a licence
4. Application for exemption

5. Advertising
6. Objections
7. Fee for issue, renewal, amendment and transfer of licence or exemption
8. Register of licences and other information
9. Inspections and enquiries by Board
10. Offences

### **Definitions**

**1.** In these Regulations, unless the context otherwise indicates, a word or expression defined in the Act has the same meaning, and -

“applicant” means a person who submits an application in terms of these Regulations;

“plant” means, when used in the context of works to be established, maintained or altered by an applicant, any structure or building or part thereof attached or to be attached to the soil and includes all fittings, implements, equipment, appliances and anything else which is used for any purpose in connection therewith and which the work or services to be rendered from it is or are required to be licensed in terms of the provisions of this Act;

“the Act” means the Electricity Act, 2007 (Act No. 4 of 2007); and

“these Regulations” mean these Regulations as amended from time to time.

### **Functions of Board**

**2.** (1) Subject to the provisions of the Act, the Board must in performing its functions -

- (a) promote an efficient, reliable, rationalised and economic system of electricity generation, transmission, supply and distribution within, and importation into and export from, Namibia;
- (b) regulate licensees in a manner that maintains and improves efficiency, economy and reliability’ on the part of licensees so as to enable all reasonable demands for electricity to be met in accordance with prevailing Government policy;
- (c) have regard to the need of licensees to be able to finance the carrying out of their licensed activities;
- (d) encourage efficiency, economy and safety in the provision and use of electricity;
- (e) regulate the quality of provision and service and the tariffs, fees and charges payable for electricity considerate of the interests of customers, consumers and licensees;
- (f) act in a manner that is predictable, transparent and fair and ensure that the independence of the Board is maintained in line with good regulatory practices;
- (g) have regard to promotion of health, safety and the environment;
- (h) oversee the effectiveness of the mechanisms, processes and forces prevalent in the electricity sector to ensure that there is a reasonable balance between the demand for electricity and the provision thereof;
- (i) have regard to the promotion of competition in the electricity supply industry and the eradication of uncompetitive behaviour in that industry; and

- (j) act in a manner consistent with the objects of the Act and any regulations made thereunder.

(2) The Board must during each financial year, on such date as the Minister and the Board may decide upon bearing in mind the date on which the Board's ensuing financial year commences, submit to the Minister a business plan and statement of the Board's estimated income and expenditure during the ensuing financial year, for approval.

### **Application for issue, renewal, amendment or transfer of a licence**

3. (1) An application for the issue, renewal, amendment or transfer of a licence must be made in the form determined by the Board and must be accompanied by the appropriate application fee specified in the Annexure, which fee is non-refundable.

(2) In so far as it is applicable to an application, the following information must be included in an application under subregulation (1):

- (a) information on the identity of the applicant as follows:
  - (i) in the case of a natural person, the full name and nationality of the person and a certified copy of the person's identity document or passport; or
  - (ii) in the case of a body corporate, the country of registration and the registration number of the body corporate, a certified copy of its certificate to commence business (or any similar document authorising such body corporate to conduct business), a certified copy of its constitutive documents such as its memorandum of association and a signed resolution of its board of directors or other managing person or body approving the submission of the application; or
  - (iii) in the case of a body or authority created by law, the name of such body or authority, the name of the law which created such body or authority and a signed resolution of its board, council or other controlling person or body approving the submission of the application; and
  - (iv) the postal and business address of the applicant and, in the case of an application for a transfer of a licence, this information must be provided with regard to both the licensee and the proposed transferee;
- (b) the type of application, namely an application for the issue, renewal, amendment or transfer of a licence;
- (c) the type of activity to which the application applies, namely generation, trading, transmission, supply, distribution, importation or export of electricity;
- (d) in the case of an application for the issue or amendment of a licence -
  - (i) a map showing the proposed location or locations where the applicant intends to erect or alter plant which map must be in accordance with the specifications of the Board;
  - (ii) a description of the technical design, including a one-line diagram of the proposed plant, and its surrounding electrical system, which the applicant intends to erect or alter;

- (iii) a description, including a site layout, of the area or areas within which the applicant intends to carry out the activities to be authorised under the licence;
  - (iv) a calculation of the net present value of the proposed plant or alteration thereto and any alternative plants which calculation must be in accordance with the guidelines determined by the Board; and
  - (v) such other information as the Board may deem necessary regarding the plant and design;
- (e) a complete list of the tariffs which the applicant intends charging to be specified in the schedule of approved tariffs to be contained in the relevant licence;
  - (f) in the case of the issue, renewal, amendment or transfer of a licence, an outline of the intended operational and business plan, unless such plan has already been submitted during a previous application and has not changed in which case such previous plan must be attached;
  - (g) in the case of an application for the issue or renewal of a licence, the desired licence period, including a motivation for such period, and an estimate of the expected income and expenditure of the relevant undertaking to be carried on by the applicant under the licence during such desired licence period;
  - (h) in the case of an application for the issue, amendment or transfer of a licence, the proposed advertisement referred to in regulation 5; and
  - (i) such other particulars the Board may require in general or in the case of a particular type of or particular licence, or in terms of the Act or any regulation, rule or code made thereunder, in order to enable the Board to make a recommendation on such application or on conditions to be imposed on a licence in terms of the Act.
- (3) When considering an application, the Board may request an applicant to -
    - (a) submit to the Board such further information as the Board may require in order to enable it to make a recommendation on such application;
    - (b) present alternative proposals in conformity with requirements presented by the Board to a proposal submitted by the applicant in the applicant's application.

### **Application for exemption**

**4.** (1) An application for exemption from having to hold a licence as contemplated in section 18(1)(d) and (2) of the Act must be made in the form determined by the Board and must be accompanied by the appropriate application fee specified in the Annexure, which fee is non-refundable.

- (2) The following information must be included in an application under subregulation (1):
  - (a) information on the identity of the applicant as follows:
    - (i) in the case of a natural person, the full name and nationality of the person and a certified copy of the person's identity document or passport; or

- (ii) in the case of a body corporate, the country of registration and the registration number of the body corporate, a certified copy of its certificate to commence business (or any similar document authorising such body corporate to conduct business), a certified copy of its constitutive documents such as its memorandum of association and a signed resolution of its board of directors or other managing person or body approving the submission of the application; or
  - (iii) in the case of a body or authority created by law, the name of such body or authority, the name of the law which created such body or authority and a signed resolution of its board, council or other controlling person or body approving the submission of the application; and
  - (iv) the postal and business address of the applicant;
- (b) the type of electricity licence and the type of activity with regard to which application for exemption is made, namely generation, trading, transmission, distribution, supply, trading, importation or export of electricity;
  - (c) a map showing the location or proposed location where the applicant intends to conduct its electricity activities which map must be in accordance with the specifications of the Board;
  - (d) a description of the technical design, including a one-line diagram of the proposed plant or network and its surrounding electrical system;
  - (e) a description, including site layout, of the area or areas within which the applicant intends to carry out the activities to be exempted;
  - (f) the written opinion and comments (if any) of every licensee conducting similar electricity activities within the same area or areas as the area or areas with regard to which application for exemption is being made with regard to such application and the proposed exemption;
  - (g) except in the case of an application for exemption from having to hold a generation or import licence, the written opinion and comments (if any) of the licensee from whom the applicant intends to be provided with electricity;
  - (h) a detailed motivation as to why exemption is applied for and as to why it should be granted to the applicant;
  - (i) a statement as to whether the applicant will provide electricity to another person or persons, a description of such persons, the services that the applicant will provide and the conditions subject to which such services will be provided and the proposed manner of charging for such electricity and, if applicable, the tariff structure of the applicant;
  - (j) an outline of the intended operational and business plan, if applicable;
  - (k) the desired period of exemption and a motivation for such period;
  - (l) the proposed advertisement referred to in regulation 5; and
  - (m) such other particulars the Board may require in general or in the case of a particular type of or particular electricity activity, or in terms of the Act or any regulations, rule

or code made thereunder, in order to enable the Board to make a recommendation on such application or on conditions to be imposed on an exemption in terms of the Act.

(3) The Board may waive the requirements of subregulation (1)(f) if the Board is convinced that the applicant has made every reasonable effort to obtain the anticipated written opinion and comments but to no avail.

(4) When considering an application for exemption, the Board may -

- (a) request an applicant to submit to the Board such further information as the Board may require in order to enable it to make a recommendation on such application;
- (b) request an applicant to present alternative proposals in conformity with requirements presented by the Board to a proposal submitted by the applicant in the applicant's application;
- (c) conduct an inspection of the proposed area or areas related to the exemption application and such other matters as the Board may deem appropriate.

### **Advertising**

**5.** (1) An applicant applying for the issue, amendment or transfer of a licence or for exemption from a licence must advertise the application in the form approved by the Board.

(2) An advertisement referred to in subregulation (1) must be published in at least one national newspaper-circulating in Namibia or one local newspaper circulating in the relevant local area.

(3) The advertisement must -

- (a) specify the information required in terms of regulation 3(2)(a), (b), (c) and (d)(i) or, in the case of an application for exemption, the information required in terms of regulation 4(2)(a), (b) and (c), subject thereto that the applicant may instead of a map include in such advertisement an accurate description in words of the area and, if necessary to clearly demarcate the area, the coordinates thereof in order to enable an interested person to clearly establish where such area is; and
- (b) list the information required in terms of regulation 3(2)(d)(ii), (iii), (iv) and (v), (e), (f), (g) and (i) or, in the case of an application for exemption, regulation 4(2)(d) to (m) and indicate clearly the physical address where such complete information can be inspected during normal business hours by any interested person.

(4) The Board may, upon a written and fully motivated request by an applicant, exempt an application from one or more of the provisions of subregulation (3), excluding information specified in regulation 3(2)(a), (b), (c) and (g) and regulation 4(2)(a) and (b), if the Board is convinced that such information is confidential and that the publication thereof may be misused or abused.

(5) The applicant must submit a copy of the newspaper in which the application was advertised to the Board as proof that such application has been advertised in accordance with this regulation within 14 days of such publication.

## Objections

6. (1) Any person desiring to object against an application advertised in terms of regulation 5 may, within a period of 30 days after the date of the publication of an advertisement, lodge a written objection against such application with the Board.

(2) An objection must be submitted in the form determined by the Board and the objector must include the following information in the objection:

- (a) information on the identity of the objector as follows:
  - (i) in the case of a natural person, the full name and nationality of the person and a certified copy of the person's identity document or passport; or
  - (ii) in the case of a body corporate, the country of registration and the registration number of the body corporate, a certified copy of its certificate to commence business (or any similar document authorising such body corporate to conduct business) and a certified copy of its constitutive documents such as its memorandum of association; or
  - (iii) in the case of a body or authority created by law, the name of such body or authority and the name of the law which created such body or authority; and
  - (iv) the postal and business address of the objector;
- (b) a copy of the newspaper in which the advertisement was placed;
- (c) the nature of the interest entertained by the objector in the application;
- (d) detailed reasons for the objector's objection.

(3) The Board must provide the applicant to whom the objection relates with a complete copy of the objection within seven days of such objection being lodged with the Board.

(4) If no public hearing is to be held with regard to an application, the Board must afford the relevant applicant at least 14 days after the closing date for objections to respond to the Board in writing to an objection lodged in terms of this regulation.

## Fee for issue, renewal, amendment and transfer of licence or exemption

7. If an application for the issue, renewal, amendment or transfer of a licence or an exemption from having to hold a licence has, in terms of the Act, been granted by the Minister the applicant must, prior to the issue, renewal, amendment or transfer of such licence or the granting of the exemption, pay the appropriate fee specified in the Annexure.

## Register of licences and other information

8. (1) The Board must keep and maintain a register, in which must be recorded -
- (a) in respect of every licence issued under the Act -
    - (i) the name of every licensee;
    - (ii) the type of licence issued;

- (iii) the area in respect of which the licence has been issued;
  - (iv) the conditions imposed on the licence;
  - (v) such other particulars as may from time to time be determined by the Board or the Minister;
- (b) in respect of every exemption granted under the Act -
- (i) the name of every exemption holder;
  - (ii) the electricity activity and licence type with regard to which exemption is granted;
  - (iii) the area in respect of which exemption applies;
  - (iv) such other particulars as may from time to time be determined by the Board or the Minister.

(2) The Board may keep the register contemplated in subregulation (1) in either electronic or paper-based format and in the event that the Board keeps an electronic register such register must be made available on the website of the Board on the world wide web.

(3) The Board must, during normal office hours, make the register available, whether in electronic or paper-based format, for inspection by any interested person at the place of business of the Board, and any such person may request copies or extracts of any entry in the register and must be provided with such copies or extracts on payment at cost to the Board.

(4) The chief executive officer may issue such general or specific directives as regards the inspection of the register as he or she deems appropriate.

### **Inspections and enquiries by Board**

- 9.** Subject to section 37 of the Act, the Board may -
- (a) inspect any licensee, customer or other person as regards any matter, or enquire into any matter relating to the use or provision of, or involving electricity; or
  - (b) enquire into the control and operation of any electricity undertaking or concern, whether licensed or not, including but not limited to, enquiring into and inspecting any agreement concluded between a licensee, customer or other person with another party relating to the supply, provision or use of electricity.

### **Offences**

- 10.** (1) Any person who -
- (a) makes or causes to be made any entry in the register which is false;
  - (b) prepares and submits a false copy of any entry in the register, or causes a false copy of such entry to be prepared and submitted;
  - (c) hinders or fails to cooperate with an inspection or an enquiry under regulation 9; or
  - (d) furnishes false or misleading information, or make any false or misleading statement knowing such information or statement to be false or misleading, in connection with



any application, statement, record or other document submitted to any authority in terms of these Regulations, commits an offence and on conviction liable to a fine not exceeding N\$ 16 000,00 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) In any legal proceedings in terms of these Regulations, any statement or entry contained in any book, register or document kept by any licensee or found on or in any premises or installation occupied or used by that licensee, and any copy or reproduction of any such statement or entry, shall be admissible in evidence as an admission of the facts set forth in that statement or entry, unless it is proved that the statement or entry was not made by the licensee.

**ANNEXURE  
FEES**

<b>Regulation</b>	<b>Nature of Fee</b>	<b>Fee</b>
3.	Application fee for: (a) Issue of licence (b) Renewal of licence (c) Amendment of licence (d) Transfer of licence	N\$ 2 500,00 N\$ 2 500,00 N\$ 2 500,00 N\$ 2 500,00
4.	Application fee for exemption	N\$ 1 500,00
8.	Fee for: (a) Issue of licence (b) Renewal of licence (c) Amendment of licence (d) Transfer of licence (e) Granting exemption	N\$ 10 000,00 N\$ 10 000,00 N\$ 5 000,00 N\$ 10 000,00 N\$ 2 500,00