

[CAP. 436

REPUBLIC OF ZAMBIA

THE ENERGY REGULATION ACT

CHAPTER 436 OF THE LAWS OF ZAMBIA

THE ENERGY REGULATION ACT

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CHAPTER 436

16 of 1995

ENERGY REGULATION

An Act to establish an Energy Regulation Board and to define its functions and powers; to provide for the licensing of undertakings for the production of energy or the production or handling of certain fuels; to repeal the National Energy Council Act and the Zambia Electricity Supply Act; and to provide for matters connected with or incidental to the foregoing.

[28th April, 1995

PART I

PRELIMINARY

- Short title 1. This Act may be cited as the Energy Regulation Act.
- Interpretation 2. In this Act, unless the context otherwise requires
- "Board" means the Energy Regulation Board established under section *three*;
- "common carrier" means
- (a) an electricity transmission or distribution line;
 - (b) a pipeline for the conveyance of crude oil, petroleum products or natural gas; and
 - (c) any other facility, installation or structure, used for the processing, storage or conveyance of energy or fuel, that the Minister, by statutory instrument, prescribes;
- "energy" means
- (a) electrical energy, however produced;
 - (b) nuclear, solar and wind energy; and
 - (c) energy produced by any other means that the Minister, by statutory instrument, prescribes;
- "fuel" means
- (a) petroleum and petroleum products;
 - (b) coal and its derivatives;
 - (c) firewood, charcoal and other wood derivatives;
 - (d) uranium or other nuclear fuel;
- "inspector" means a person appointed under section *four* to be an inspector for the purposes of this Act;

"undertaking" means any commercial undertaking, whether public or private, for

- (a) the production, generation, transmission, distribution or supply of energy;
- (b) the manufacture, refining, transportation, storage or supply of fuel; or
- (c) the manufacture, distribution or supply of equipment used for any activity mentioned in paragraph (a) or (b), other than any such equipment
 - (i) designed for ordinary household use;
 - (ii) of a design or type prescribed by the Minister by statutory instrument; or
 - (iii) designed or used for a purpose, or in such circumstances, as may be so prescribed;

but does not include an undertaking which the Minister, by statutory instrument, declares not to constitute an undertaking for the purposes of this Act.

PART II

THE ENERGY REGULATION BOARD

3. (1) There shall be an Energy Regulation Board, which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform. Establishment of the Board

(2) The provisions of the Schedule shall apply in respect of the Board and its members.

4. The Board may engage, on such terms and conditions as the Board may determine, such other staff as is necessary for the exercise and performance of the powers and functions of the Board under this Act. Staff of the Board

5. (1) In order to ensure compliance with the provisions of this Act, a sufficient number of persons shall be appointed under section *four* as inspectors for the purposes of this Act. Inspectors

(2) Every inspector shall be provided with a certificate of appointment containing such particulars as the Board may determine, and in the exercise of any powers of the inspector under this Act, the inspector shall produce the certificate for inspection by any person reasonably requiring its production.

Functions of
the Board

6. (1) The Board shall

- (a) monitor the efficiency and performance of undertakings, having regard to the purposes for which they were established;
- (b) receive and investigate complaints from consumers on price adjustments made, or services provided, by any undertaking, and regulate such adjustments and services by the attachment of appropriate conditions to licences held by undertakings;
- (c) receive and investigate complaints concerning the location or construction of any common carrier or any energy or fuel facility or installation or the carrying out of any works by any undertaking, and regulate such location and construction by the attachment of appropriate conditions to licences held by undertakings;
- (d) in conjunction with the Zambia Competition Commission established by the Competition and Fair Trading Act, monitor the levels and structures of competition within the energy sector with a view to promoting competition and accessibility to any company or individual who meets the basic requirements for operating as a business in Zambia;
- (e) in conjunction with the Zambia Standards Bureau established by the Standards Act, design standards with regard to the quality, safety and reliability of supply of energy and fuels;
- (f) in conjunction with other Government agencies, formulate measures to minimise the environmental impact of the production and supply of energy and the production, transportation, storage and use of fuels and enforce such measures by the attachment of appropriate conditions to licences held by undertakings; and
- (g) make recommendations to the Minister as to the measures to be taken through regulations to be made under this Act.

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(2) The Board shall have and may exercise and perform such other powers and functions as are conferred or imposed on it by or under this Act or any other written law.

Delegation

7. The Board may, by instrument in writing, delegate to a person for the time being holding or acting in a specified position in the staff establishment of the Board, or to any committee of the Board, the exercise of such of the functions of the Board as are specified in the instrument.

PART III

LICENSING OF CERTAIN UNDERTAKINGS

8. (1) A person shall not establish or operate an undertaking except in accordance with this Act and under the authority of a licence issued under this Act. Undertakings
to be licensed

(2) A person who establishes or operates an undertaking in contravention of this section shall be guilty of an offence and shall be liable, upon conviction, to a penalty not exceeding five hundred thousand penalty units.

9. (1) Any person may apply to the Board for a licence to establish and operate an undertaking. Applications
for licences

(2) A licence application shall be made in such form as may be prescribed by the Minister by statutory instrument, and shall be accompanied by the application fee so prescribed.

(3) The Board shall first determine whether, in its opinion, there is any reason why the application should, in the public interest, be rejected without further proceedings under this section.

(4) Except where the Board decides to reject the application in the public interest, the Board shall cause a notice to be published in the *Gazette*

- (a) indicating the receipt of each licence application and giving a description of the nature and location of the proposed undertaking;
- (b) informing members of the public that the application may be inspected at the offices of the Board; and
- (c) inviting any member of the public who objects to the granting of the licence, whether on personal, environmental or other grounds, to lodge an objection with the Board within a time, being not less than thirty days, limited by the notice.

(5) The Board shall allow any person to inspect, or furnish any person with a copy of, an application for a licence, on payment by the person of such fee as may be prescribed by the Minister by statutory instrument in respect of the costs of such inspection or the production of such a copy.

10. (1) An objection to the grant of a licence shall be made in such form as may be prescribed by the Minister, by statutory instrument, and shall be accompanied by the objection fee so prescribed. Objections to
licence
applications

(2) An objector shall be entitled to lodge such written submissions and evidence as the objector desires to furnish in support of the objection.

(3) The objection, and any supporting documentation, shall be rejected if it is not lodged within the time allowed by the notice published under section *nine* in relation to the application:

Provided that the Board, at any time before granting a licence in pursuance of the application, may at its discretion entertain an objection made out of time.

(4) The Board shall furnish the applicant for the licence with particulars of any objection made to the grant of the licence, and the applicant may, if he or she so desires, reply to the objection in writing addressed to the Board.

Determination
of applications

11. (1) In determining any application for a licence, the Board shall take into account

- (a) the extent to which the public interest will be served by the undertaking to which the application relates; and
- (b) the merits of any objection made to the grant of a licence in pursuance of an application.

(2) The Board may, if it thinks fit, convene a meeting with the applicant and any objectors to discuss the application; and if the number of objectors is large, or if the Board considers that the circumstances warrant such action, the meeting so convened may be opened to the public, but in either case the procedure at any such meeting shall be as the Board may, in its absolute discretion, determine.

(3) The Board may grant or refuse to grant the licence; and where it decides to grant the licence, the Board shall notify the applicant of the conditions intended to be attached to the licence.

Conditions of
licences

12. (1) A licence is subject to such conditions as may be imposed by the Board and specified in the licence when it is granted or when it is varied in accordance with subsection (3).

(2) The conditions of a licence may include conditions

- (a) requiring the payment to the Board of a fee on grant of the licence and of annual or other periodic licence fees:

Provided that no such fee shall exceed one-half of one per centum of the annual turnover of the undertaking, except with the consent of the Minister;

- (b) making provision with respect to the fees and charges imposed in respect of energy, fuel or any service to be provided in the course of the licensed undertaking, and the adjustment of such fees and charges;
- (c) requiring the publication by the licensee of notices specifying the method of calculating or otherwise determining any charges referred to in paragraph (b);

- (d) requiring the licensee or any other person concerned in the undertaking authorised by the licence to furnish to the Board, in such manner and at such times as the Board may reasonably require, documents, accounts, returns, estimates and other information that the Board requires for the purposes of exercising or performing its powers and functions under this Act;
- (e) requiring the licensee not to show undue preference to, or exercise undue discrimination against, particular persons or persons of any class or description (including persons in rural areas) as regards any aspect of the provision of energy, fuel or any service under the licence;
- if) requiring the licensee to consult the Board with respect to the location and construction of common carriers, facilities, plant or installation to be used for the purposes of the undertaking or other specified matters;
- (g) requiring the licensee to refer specified matters to the Board for determination;
- (h) requiring the licensee to comply with directions given by the Board from time to time in relation to specified matters;
- (i) providing for arbitration of disputes arising in connection with the terms and conditions of, or otherwise concerning, the licence; and
- (j) requiring and regulating the payment of fines and penalties by the licensee for breaches of any or any specified terms and conditions of the licence.

(3) Where a licensee has on repeated occasions contravened the conditions of the licence, or has been the subject of such complaints by the consumers of any commodity or service provided by the licensee in the course of its undertaking as in the opinion of the Board, to warrant action under this section, the Board by notice in writing to the licensee, may vary the conditions of the licence or attach new conditions to the licence.

13. Subject to this Act, a licence remains in force for the period specified in the licence and may be renewed on its expiry on payment to the Board of such fee as may be determined by or under the conditions of the licence or, in default of such determination, as the Minister may, by statutory instrument prescribe.

Duration
of licences

14. (1) Any purported transfer of a licence shall be void and of no effect unless the consent thereto of the Board was first obtained.

Licences not
transferable
except with
Board's
consent

(2) The Board shall consent to any such transfer unless it has reason to believe that the public interest is likely to be prejudiced by the transaction.

(3) In this section "transfer" means any sale, lease mortgage, charge or other assignment, demise or encumbrance.

Revocation of
licence or
refusal of
renewal

15. (1) For the purposes of this section, a licensee is in default if the licensee

(a) has on repeated occasions contravened the provisions of this Act or conditions of the licence;

(b) has at any time contravened a condition of the licence that is expressed in the licence to be a condition whose contravention may result in revocation or suspension of the licence; or

(c) has been the subject of such complaints by the public as in the opinion of the Board, to warrant action under this section.

(2) Where a licensee is in default, the Board, with the consent of the Minister, may

(a) by notice in writing to the licensee, revoke the licence; or

(b) refuse to renew the licence on its expiry.

(3) The Board may, with the consent of the Minister, refuse to renew a licence if the Board is of the opinion that the service provided under the licence is no longer necessary in the public interest.

(4) A licence shall not be revoked, nor shall its renewal be refused, without giving the licensee an opportunity to be heard.

Appeal

16. (1) Any person aggrieved by the revocation of a licence, or by the Board's refusal to renew, or approve a transfer of, a licence, may appeal to the Minister within a time and in the manner prescribed by the Minister by statutory instrument.

(2) Due lodgement of an appeal shall stay any revocation against which the appeal is brought, pending the outcome of the appeal, and in the case of a refusal of renewal, the licence if expired shall be deemed to have been renewed on the same terms and conditions pending that outcome.

(3) The Minister's decision on an appeal shall be final, subject only to an appeal to the High Court on a point of law.

PART IV

OTHER POWERS OF THE BOARD

Direction to
cease
operation of
unlicensed
undertaking

17. (1) Where an undertaking is being operated in contravention of this Act, the Board may, by notice served on the operators of the undertaking, direct them to take, within a reasonable time limited by the notice, all necessary steps to cease operations, and to dismantle,

to the satisfaction of the Board, any plant and equipment used for the purposes of the undertaking.

(2) Where a direction given under this section is not complied with; the Board by its servants or agents may enter into the place where the undertaking is being operated and so cause the direction to be carried out.

(3) The costs to the Board of any action under subsection (2) are recoverable, as a debt due to the Board, in any court of competent jurisdiction.

18. (1) For the purposes of this Act, an inspector may, at any reasonable time, enter any area, place or premises that the inspector reasonably believes is used for the purposes of, or in connection with, an undertaking, including any area, place or premises believed to be used only for the storage of equipment or for the keeping of any accounts, documents or records relating to such an undertaking:

Powers of
inspectors

Provided that this section shall not be taken to authorise entry into any premises or part thereof that is being used as a private dwelling except with the consent of the occupant or under the authority of a warrant issued in accordance with law.

(2) An inspector who enters an area, place or premises under this section shall have full and free access to any plant, equipment storage area and facility therein.

(3) The owner or person in charge of any area, place or premises referred to in subsection (1) and any person found there shall give an inspector reasonable assistance for the purpose of the exercise of the inspector's powers under this Act.

(4) Without limiting the generality of the foregoing provisions of this section, the inspector may

- (a) direct the person in charge to produce for inspection any substance or articles manufactured, produced or stored on the premises, or any books, accounts or records kept there;
- (b) take samples of any such substance or articles, and make copies of or take extracts from any such book, account or record;
- (c) inspect machinery, equipment, appliances, meters, fittings, and apparatus; and
- (d) inspect any common carrier, facility, plant or installation.

19. A person who

Obstruction of
Inspector

- (a) willfully delays or obstructs an inspector in the exercise or performance of the inspector's powers and functions;
- (b) refuses to give an inspector such reasonable assistance as

the inspector may require for the purpose of the exercise of the inspector's powers under this Act; or

- (c) knowingly or negligently gives an inspector false or misleading information in answer to any inquiry made by the inspector;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

PART V

FINANCIAL PROVISIONS

Funds of the Board

20. (1) The funds of the Board shall consist of such moneys as may

- (a) be appropriated by Parliament for the purposes of the Board;
- (b) be paid to the Board by way of grants or donations; and
- (c) vest in or accrue to the Board.

(2) The Board may

- (a) accept moneys by way of grants or donations from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia;
- (b) subject to the approval of the Minister, raise by way of loans or otherwise such moneys as may be required for the discharge of the functions of the Board; and
- (c) charge and collect fees in respect of programmes, seminars and other services provided by the Board.

(3) There shall be paid from the funds of the Board

- (a) grants which have been received by the Board for the purposes of any particular organisation or any branch of any organisation;
- (b) allowances of the members of the Board;
- (c) salaries of the full-time members of the Board;
- (d) salaries, loans and other costs of the staff of the Board; and
- (e) any other expenses incurred by the Board in the performance of the Board's functions.

Application of licence fees, etc.

21. (1) Amounts payable as fees under this Act shall be paid to the general revenues of the Republic.

(2) Moneys paid to the general revenues under this section shall be applied to the development of the energy sector in Zambia.

22. The financial year of the Board shall be the period of twelve months ending on 31st December in each year. Financial year

23. (1) The Board shall cause to be kept proper books of account and other records relating to its financial affairs. Accounts

(2) The accounts of the Board for each financial year shall be audited by auditors appointed by the Board with the approval of the Minister.

24. (1) As soon as practicable, but not later than six months after the expiry of each financial year, the Board shall submit to the Minister a report concerning the activities of the Board during that financial year. Annual report

(2) The report shall include information on the financial affairs of the Board, and there shall be appended to the report

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than twenty-one days after the first sitting of the National Assembly next after the receipt of the report, lay it before the National Assembly.

PART VI

MISCELLANEOUS

25. (1) Except as required by law, or with consent in writing given by or on behalf of the Board, a person shall not publish or disclose to any other person the contents of any document or communication, or any other information, which relates to, and which has come to the person's knowledge in the course of, the performance by the person of any duty under this Act. Unauthorised publication or disclosure of information

(2) A person having information that has been published or disclosed to the person in contravention of this section shall not publish or communicate it to any other person.

(3) A person who contravenes the provisions of this section shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

26. Any notice or other document required or authorised to be given under this Act may be given Serving of notice

(a) by delivering it to the person to whom it is directed;

- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it in a prepaid registered letter addressed to that person at the person's usual or last known place of abode, place of business or postal address;
- (d) in the case of a company, by delivering it to the secretary of the company at its registered or principal office, or by sending it in a prepaid registered letter addressed to the secretary of the company at that office; or
- (e) where
 - (i) the notice is to be given to a person in the person's capacity as the holder of any interest in land; or
 - (ii) it is not practical, after reasonable inquiry, to ascertain the person's name or address;
 by addressing the notice to the person having that interest in the premises (specifying the premises and the interest concerned) and by delivering it to some person on the premises, or if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Regulations

27. (1) The Minister may, by statutory instrument, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), regulations may provide for the following matters:

- (a) the form and manner of making applications for licences and of objections thereto and the fees payable on any such application or objection;
- (b) standards with regard to the quality, safety and reliability of supply of energy and fuels and related installations;
- (c) securing the safety of the public from personal injury or damage to property arising from the production, transmission, transportation, transformation, storage, distribution, supply or use of energy or fuel;
- (d) reporting of and inquiries into accidents involving the operation of any undertaking or associated plant, equipment or vehicles:

Provided that, in the application of any regulations under this section to an undertaking for the generation, transmission, distribution or supply of electricity, such regulations shall have effect subject to the provisions of the Electricity Act, and the regulations made thereunder.

(3) Regulations made under the provisions of this Act may provide that persons offending against the regulations shall be liable to a fine not exceeding one hundred thousand penalty units.

(4) In exercise of the powers conferred by this section, the Minister may provide for different regulations to apply to different undertakings or consumers or to different classes of undertakings or consumers.

28. (1) Any undertaking that was lawfully being operated -

Savings and
transitional
provisions

(a) immediately before the commencement of this Act, under a statutory licence or other statutory authority that was issued in pursuance of an application made before the date referred to in paragraph (b); or

(b) immediately before the date on which the Bill for this Act was introduced into the National Assembly;

may continue to be operated after this Act comes into force without a licence under this Act:

Provided that:

(i) where, before the commencement of this Act, the undertaking was operated under a statutory licence or other statutory authority, that licence or authority shall be deemed to be a licence under this Act; and

(ii) where, before the commencement of this Act, the undertaking was lawful without any licence or authority, the undertaking may be operated without a licence under this Act only for so long as it remains in the same ownership.

SCHEDULE (Section 3)

THE BOARD AND MEMBERS OF THE BOARD

1. (1) The Board shall be a permanent body consisting of three full-time members and four part-time members appointed by the Minister.

Constitution of
the Board

(2) Of the full-time members

(a) one shall be a person who, in the opinion of the Minister, has adequate knowledge and qualifications relating to the electricity industry;

(b) one shall be a person who, in the opinion of the Minister, has adequate knowledge and qualifications relating to the petroleum industry;

and

(c) one shall be a person who, in the opinion of the Minister, has adequate knowledge and qualifications relating to the supply of other forms of energy and fuels.

(2) A person shall not be appointed as a member of the Board if he or she

(a) is an undischarged bankrupt;

(b) has been convicted of an offence under this Act;

(c) has been convicted of an offence involving fraud or dishonesty;

(d) has been convicted of any other offence and sentenced to a term of imprisonment of not less than six months; or

(e) is the holder of a licence or has any interest in a licence or in a partnership or corporation that is the holder of a licence.

(3) One of the part-time members shall, in and by the terms of the member's appointment or otherwise in writing signed by the Minister, be appointed as Chairman of the Board.

Term of office
and vacancy

2. (1) A member of the Board shall, subject to the provisions of this Schedule, hold office for a term of not more than three years.

(2) A member of the Board shall be eligible for re-appointment upon the expiry of the original term of office.

(3) Upon the expiration of the term for which a member is appointed, the member shall continue to hold office until a successor has been appointed, but in no case shall any such extension of the term exceed three months.

(4) The office of a member shall be vacated

(a) upon the member's death;

(b) if the member is adjudged bankrupt;

(c) if the member is absent from three consecutive meetings of the Board without the prior approval of the Board;

(d) upon the expiry of one month's notice of the member's intention to resign from office, given by the member in writing to the Minister;

(e) upon the expiry of one month's notice of the member's removal given to the member in writing by the Minister;

(f) if the member becomes mentally or physically incapable of performing the duties of a member of the Board; (g) if the member is convicted of an offence under this

Act; (h) if the member is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term of six months or more; or

(i) if the member becomes the holder of a licence or acquires any interest in a licence or in a partnership or corporation that is the holder of a licence.

Business of
the Board

3. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet as often as necessary or expedient for the conduct of its business and its meetings shall be held at such places, times and days as the Board may determine.

(3) The Chairman may at any time call a meeting of the Board and shall call a special meeting to be held within seven days of receipt of a written request for that purpose addressed to him by any two members of the Board.

(4) The Chairman shall preside at any meeting of the Board, or in the Chairman's absence from any meeting, such member as may be elected by the members present to preside at the meeting.

(5) The decision of the Board shall be by a majority of votes; and in the event of an equality of votes, the Chairman or person presiding at the meeting shall have, in addition to a deliberative vote, a casting vote.

(6) Four members of the Board shall form a quorum.

(7) Minutes of each meeting of the Board shall be kept and shall be confirmed as soon as practicable thereafter at a subsequent meeting.

Committees

4. (1) The Board may, for the purpose of performing its functions, establish committees.

(2) The Board may appoint a person as a member of a committee whether or not the person is a member of the Board, and any person so appointed shall hold office for such period as the Board may determine.

(3) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

(4) Each committee shall keep minutes of its meetings and shall keep the Board informed of its activities and shall conduct its proceedings in such manner as the Board may direct.

(5) Meetings of a committee shall be held at such times and places as the committee may determine or as the Board shall direct.

Remuneration

5. A full-time member of the Board shall be paid such salary, allowances and other benefits as may be determined by an agreement governing the terms of the member's appointment.

6. A part-time member of the Board and a member of any committee of the Board shall be paid such travelling and subsistence allowances as the Board, with the approval of the Minister, may determine.

Allowances

7. A person who is present at a meeting of the Board or any committee of the Board and who is directly or indirectly interested in a matter that is the subject of consideration at the meeting shall, as soon as is practicable after the commencement of the meeting, disclose the interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

Disclosure of interest

8. No action or other proceeding shall lie or be instituted against any member of the Board or a committee of the Board, or any member of the staff of the Board, for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of their powers or functions under this Act.

Immunity of Board and staff

9. Any contract or instrument which the Board desires to enter into or make shall be executed under the hands of the Chairman and one other member authorised by the Board.

Authentication of documents