

GOVERNMENT OF ZAMBIA

ACT

No. 23 of 2003

Date of Assent: 11th December, 2003

An Act to amend the Energy Regulation Act.

[31st December, 2003

ENACTED by the Parliament of Zambia

Enactment

1. This Act may be cited as the Energy Regulation (Amendment) Act, 2003, and shall be read as one with the Energy Regulation Act, in this Act referred to as the principal Act.

Short title
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2. Section *two* of the principal Act is amended—

Amendment
of
section 2

(a) in the definition of “common carrier” by the deletion of paragraph (a) and the substitution therefor of the following:

(a) an electricity transmission or distribution line declared as a common carrier under the Electricity Act;

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(b) in the definition of “fuel” by the deletion of paragraph (c); and

(c) in the definition of “undertaking”

(i) in paragraph (b) by the deletion of the word “manufacture” and the substitution therefor of the word “production”; and

(ii) in paragraph (c) by the insertion after the word “Minister” of the words “on the recommendation of the Board.”

3. The principal Act is amended by the insertion immediately after section *three* of the following new section:

Insertion of
new
section 3A

Executive-Director

3.A (1) The Board shall appoint an Executive-Director of the Board who shall be the chief executive officer of the Board and who, subject to the general or special direction of the Board, shall be responsible for the day to day administration of the Board.

(2) The terms and conditions of service of the Executive-Director shall be determined by the Board with the approval of the Minister.

(3) The Executive-Director shall attend meetings of the Board and may attend meetings of any committee of the Board and may address such meetings, but shall not vote on any matter.

(4) The Chairperson or any person presiding at any meeting of the Board may request the Executive-Director to withdraw from any meeting of the Board.

Repeal and replacement of section 4

4. The principal Act is amended by the repeal of section *four* and the substitution therefor of the following:

Secretary and other staff

4. (1) There shall be a Secretary to the Board who shall be appointed on such terms and conditions as the Board may, with the approval of the Minister, determine.

(2) The Secretary shall, subject to the general supervision of the Executive Director perform such duties as the Board may determine.

(3) The Board may appoint, on such terms and conditions as it may, with the approval of the Minister, determine, such other staff as it considers necessary for the performance of its functions under this Act.

Amendment of section 6

5. Section *six* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following:

(1) The Board shall—

(a) issue licences under this Act;

(b) monitor the efficiency and performance of the undertakings, having regard to the purposes for which they were established;

(c) receive and investigate complaints from consumers on price adjustments by any undertaking, and regulate such adjustments by the attachment of appropriate conditions to licences held by undertakings or by such other means as the Board considers appropriate;

(d) receive or investigate complaints from consumers

and licenced undertakings on services provided by the undertakings and regulate such services by the attachment of appropriate conditions to the licences held by undertakings or by such other means as the Board considers appropriate.

(e) approve the location and construction of, and 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;

(f) in conjunction with the Zambia Competition Commission established under the Competition and Fair Trading Act—

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(i) investigate and 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 requirement for operating as a business in Zambia, and

(ii) develop and implement appropriate rules to promote competition in the energy sector;

(g) in conjunction with the Zambia Bureau of Standards established under the Standards Act, design standards with regard to the quality, safety and reliability of supply of energy and fuels;

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(h) in conjunction with the Environmental Council of Zambia established under the Environmental Protection and Pollution Control Act, formulate measures to minimise the environmental impact of the production and supply of energy and the production, transportation, conversion, storage and use of fuels and enforce such measures by the attachment of appropriate conditions to licences held by the undertaker; and

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(i) make recommendations to the Minister as to the measures to be taken through regulations to be made under this Act.

- Amendment of Part III 6. The principal Act is amended in the heading to Part III by the deletion of the word "CERTAIN".
- Amendment of section 8 7. Section *eight* of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following:
(2) A person who establishes or operates an undertaking in contravention of this section commits an offence and shall be liable, on conviction, to a fine of not less than fifty thousand penalty units but not exceeding five hundred thousand penalty units, or to imprisonment for a term of not less than six months but not exceeding seven years, or to both the fine and imprisonment.
- Amendment of section 9 8. Section *nine* of the principal Act is amended—
(a) by the deletion of subsection (2) and the substitution therefor of the following:
(2) An application for a licence shall be in such form, and shall be accompanied by such application fee, as may be prescribed by the Minister, by statutory instrument, on the recommendation of the Board; and
(b) in subsection (3), by the insertion of the words " after according the applicant an opportunity to be heard " after the words " whether in its opinion ".
- Amendment to section 10 9. Section *ten* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following:
(1) An objection to the grant of a licence shall be made in such form, and shall be accompanied by such objection fee, as may be prescribed by Minister, by statutory instrument, on the recommendation of the Board.
- Amendment of section 11 10. Section *eleven* of the principal Act is amended—
(a) in subsection (3), by the deletion of the word " intended "; and
(b) by the insertion immediately after subsection (3) of the following new subsections:
(4) Where the Board refuses to grant a licence under subsection (3) the Board shall, within fourteen days of making the decision, notify the applicant of the decision stating the reasons for the refusal to grant the licence.
(5) Any person who is aggrieved by any refusal of the Board to issue a licence may appeal to the High Court within thirty days of receiving the notification.

11. Section *twelve* of the principal Act is amended—
- Amendment
of section 12
- (a) in subsection (2)—
- (i) by the deletion in the proviso to paragraph (a) of the words “ one half of one per centum ” and the substitution therefor of the words “ zero point eight ” per centum;
- (ii) by the deletion of paragraph (f) and the substitution therefor of the following:
- (f) requiring the licensee to obtain the approval of the Board with respect to the location and construction and decommissioning of common carriers, facilities, plant or installation to be used for purposes of the undertaking or other specified matters; and
- (b) in subsection (3), by the deletion of the word “ contravened ” and the substitution therefor of the word “ breached ”.
12. Section *fifteen* of the principal Act is amended—
- Amendment
of section 15
- in subsection (4) by the insertion of the words “ nor its conditions be varied ” after the words “ be refused ”.
13. Section *sixteen* of the principal Act is amended—
- Amendment
of section 16
- (a) by the deletion of subsection (1) and the substitution therefor of the following:
- (1) Any person who is aggrieved by the revocation of a licence, or by the Board’s refusal to renew a licence, may appeal to the High Court within thirty days of receiving notification of the revocation of, or the Board’s refusal to renew, a licence; and
- (b) by the deletion of subsection (3).
14. Section *nineteen* of the principal Act is amended by the deletion of the words “ 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 ” and the substitution therefor of the words “ commits an offence and shall be liable on conviction to a fine of not less than twenty thousand penalty units but not exceeding one hundred thousand penalty units, or to imprisonment for a term of not less than one month but not exceeding five years, or to both the fine and imprisonment. ”
- Amendment
of section 19

- Amendment of section 20 15. Section *twenty* of the principal Act is amended in paragraph (a) of subsection (2)—
- (a) by the deletion of the semi-colon at the end of that paragraph and the substitution therefor of a colon; and
- (b) by the insertion after the colon of the following new proviso:
- Provided that the Board shall—
- (i) not receive grants or donations from any undertakings or its associates; and
- (ii) disclose, by *Gazette* notice, information of any grants or donations received under this section.
- Amendment of section 25 16. Section *twenty-five* of the principal Act is amended by the deletion of subsection (3) and the substitution therefor of the following:
- (3) A person who contravenes the provisions of this section commits an offence and shall be liable, upon conviction, to a fine of not less than ten thousand penalty units but not exceeding fifty thousand penalty units or to imprisonment for a term of not less than thirty days and not exceeding three years, or to both the fine and imprisonment.
- Amendment of section 27 17. Section *twenty-seven* of the principal Act is amended in subsection (3) by the insertion of the words “of not less than three thousand penalty units but” before the words “not exceeding”.
- Repeal and replacement of Schedule 18. The principal Act is amended by the repeal of the Schedule and the substitution therefor of the Schedule set out in the Appendix to this Act.

APPENDIX

(Section 20)

SCHEDULE

(Section 3)

ADMINISTRATION OF BOARD

- Seal of Board 1. (1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Secretary.
- (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or any other person authorised in that behalf by a resolution of the Board.
- (3) Any contract or instrument which, if entered into or executed

by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Executive Director or any other person generally or specifically authorised by the Board in that behalf.

(4) Any document purporting to be a document under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

2. (1) The Board shall consist of seven part-time members appointed by the Minister from among eminent persons who have adequate knowledge, experience and qualifications in—

Composition
of the Board

- (a) engineering;
- (b) finance;
- (c) law;
- (d) natural resources management;
- (e) electricity industry;
- (f) petroleum industry and;
- (g) administration.

(2) For the purposes of subsection (1) a person is eminent if the person has attained recognition in the person's profession or office.

(3) The Chairperson and the Vice-Chairperson shall be elected by the members from among their number.

(4) A person shall not be appointed as a member of the Board if that person —

- (a) is an undischarged bankrupt;
- (b) has been convicted of an offence involving fraud or dishonesty;
- (c) has been convicted of an offence under this Act or any other written law and sentenced to a term of imprisonment of not less than six months, without the option of a fine;
- (d) is an office bearer or employee of any political party; or
- (e) is the holder of a licence or has any interest in a licence or in a partnership or corporation that is a holder of a licence.

3. (1) Subject to the other provisions of this Act, a member of the Board shall hold office for a period of three years from the date of appointment and shall be eligible for re-appointment for one further term of three years.

Tenure of
office and
vacancy

(2) A member may resign upon giving one month's notice, in writing, to the Chairperson and to the Minister.

(3) The office of the member shall become vacant—

- (a) upon the member's death;
- (b) if the member is absent without reasonable excuse from three consecutive meetings of the Board of which the member has had notice;
- (c) if the member acquires a licence in the energy sector;
- (d) if the member becomes mentally or physically incapable of performing the duties of a member of the Board; or
- (e) if the member is declared bankrupt.

(4) On the expiration of the period for which a member is appointed the member shall continue to hold office until a successor has been appointed but in no case shall the further period exceed three months.

Filling of
casual
vacancy

4. Whenever the office of a member becomes vacant before the expiry of the term of office, the Minister may appoint another member in place of the member who vacates office but that member shall hold office only for the unexpired part of the term.

Proceedings
of
Board

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

(2) The Board shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.

(3) The Chairperson may, upon giving notice of not less than fourteen days, call a meeting of the Board and shall call a special meeting to be held within fourteen days of receipt of a written request to the Chairperson by at least two members of the Board.

(4) If the urgency of any particular matter does not permit the giving of such notice as is required under subparagraph (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.

(5) Four members of the Board shall form a quorum at any meeting of the Board.

(6) There shall preside at any meeting of the Board—

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice-Chairperson; or
- (c) in the absence of the Chairperson and the Vice-Chairperson such member as the members present may elect for the purpose of that meeting.

(7) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

(8) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Board but such person shall have no vote.

(9) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

5. (1) The Board may, for the purpose of performing its functions under this Act, constitute such committees as it considers necessary and may delegate to any committee such of its functions as it considers fit.

Committees of Board

(2) The Board may appoint as members of a committee, persons who are, or are not, members of the Board, except that at least one member of a committee shall be a member of the Board.

(3) A person serving as a member of a committee shall hold office for such period as the Board may determine.

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

6. The members of the Board or any committee shall be paid such allowances as the Board may, with the approval of the Minister, determine.

Allowances for members

7. (1) If a member or person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member or person or the member or person's spouse is directly or indirectly interested in a private capacity, the member or person shall as soon as is practicable after the commencement of the meeting, declare such 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

(2) A declaration of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

8. (1) A person shall not, without the consent in writing given by, or on behalf of, the Board, publish or disclose to any person otherwise than in the course of duties, the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

Prohibition of disclosure of information

(2) Any person who knowingly contravenes the provisions of subparagraph (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a period not exceeding three months, or to both.

