

THE ELECTRICITY BILL
(No. VII of 2005)

Explanatory Memorandum

The object of this Bill is –

- (a) to make better provision for and in connection with the regulation and licensing of electricity services, including the generation, transmission, and distribution of electricity;
- (b) to provide for a transparent method for the determination of tariff in connection with electricity services;
- (c) to provide for a Code of Practice on electrical installation in buildings in the interests of public safety;
- (d) to establish an Inspectorate with the responsibility of monitoring compliance with the Code of Practice;
- (e) to provide for new offences to cater for the fraudulent use of an electricity service and fraudulent installation on any electrical facility.

..... 2005

A. Ganoo
Minister of Public Utilities

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(No. VII of 2005)

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A BILL

To make provision for and in connection with the regulation and licensing of electricity services, the safety of electrical installations, the establishment of an Inspectorate, the determination of tariff and for matters related to or connected with the foregoing

ENACTED by the Parliament of Mauritius, as follows –

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Electricity Act 2005.

2. Interpretation

In this Act -

“authorised officer” has the same meaning as in the Utility Regulatory Authority Act 2004;

“Authority” means the Utility Regulatory Authority established under the Utility Regulatory Authority Act 2004;

“bulk supply” means the supply of electricity in bulk -

- (a) to any licensee for the purpose of conducting its licensed transmission and distribution activities;

(b) to any eligible customer;

“Code of Practice” means the Code of Practice as prescribed under section 30;

“customer” means any person to whom electricity service is, or is required to be, provided by a licensee;

“distribution” means the conveying of electricity to customers over electric lines of less than 66 kV by any licensee licensed for that purpose;

“distribution system” means electrical facilities used for distribution;

“electric line” means a wire, conductor or other means used for the purpose of conveying, transmitting or distributing electricity together, with any pole, casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting it, or any apparatus connected therewith, used for the purpose of conveying, transmitting or distributing electrical energy;

“electrical facilities” means any equipment, apparatus or installation used to generate, transmit, supply or make use of electricity, including –

(a) any generating stations, electric lines, substations, transformers and switchgear equipment; and

(b) any buildings or civil works used for such purposes and any site on which such equipment, apparatus, installation or buildings are located;

“electricity service” means the generation, transmission, distribution or bulk supply of electricity;

“eligible customer” means any customer authorised by the Authority to receive a supply of electricity directly from the holder of a generation licence or bulk supply licence;

“financial year” has the same meaning as in section 111 of the Constitution;

“generating station” means any facility used for the generation of electricity;

“generation” means the conversion of any form of energy into electrical energy;

“Inspectorate” means the Inspectorate established under section 31;

“licence” means a licence issued under section 6;

“licensee” means a person who holds a licence;

“load dispatching” means the matching of supply of electricity to demand for electricity;

“local authority” has the same meaning as in the Local Government Act 2003;

“low voltage” means voltage, in the case of alternating current, of not more than 1,000 volts and in the case of direct current, of not more than 1,500 volts;

“mains” means a low voltage conductor which is part of a distribution system that feeds electricity to a service line;

“Minister” means the Minister to whom responsibility for the subject of public utilities is assigned;

“point of supply” means the outgoing terminal of a licensee’s controlling switch or metering system;

“service line” means a low voltage conductor or electric line which connects the mains to the point of supply;

“system operator” means the operator of a transmission, distribution, load dispatching or similar systems;

“tariff” means a rate, fee or charge for electricity service, including any terms and conditions relating to the service;

“transmission line” means an electric line used for the purpose of transmission of electricity;

“transmission” means the conveying of electricity over electric lines of 66 kV or more between a generating station and an electrical substation, or between generating stations or between electrical substations;

“transmission system” means electrical facilities used for transmission;

“Tribunal” means the Regulatory Authorities Appeal Tribunal established under the Regulatory Authorities Appeal Tribunal Act 2005;

“undertaking” means an enterprise involved in the provision of an electricity service;

“utility service” has the same meaning as in the Utility Regulatory Authority Act 2004.

PART II - LICENSING OF ELECTRICITY SERVICES

3. Licence of electricity service

(1) Notwithstanding any other enactment, but subject to subsection (3), no person shall provide an electricity service, unless he holds a licence issued by the Authority under this Act.

(2) The Authority may issue a licence in respect of an activity listed in the Schedule.

(3) The Authority shall, subject to such conditions it may impose, exempt a person from holding a licence where -

- (a) a person uses a generator to generate electricity for his own consumption or for the supply of electricity to employees or tenants staying on premises belonging to the person;
- (b) the generator is not connected to a licensee's network; and
- (c) the generator does not exceed 400 kW.

(4) Notwithstanding subsection (3), where the supply of electricity to a person has been interrupted or discontinued under this Act in respect of a premises, that person or any other person shall not, in respect of the same premises, be exempt from holding a licence.

4. Application for licences

- (1) Any person who wishes to -
 - (a) obtain, transfer or renew a licence; or
 - (b) have the terms of his licence amended,

shall make a written application to the Authority in a manner and form determined by the Authority.

(2) On receipt of an application under subsection (1), the Authority shall give public notice of the application in the *Gazette* and in 2 daily newspapers.

(3) Any person wishing to object to an application under subsection (1), may do so in writing to the Authority within 14 days of the last publication made under subsection (2).

(4) Any person who objects to an application under subsection (3) shall state the grounds of the objection.

- (5) The Authority may -
 - (a) require the applicant to furnish any additional information that it considers relevant;
 - (b) hear the applicant, the objector or such other person as it considers necessary.
- (6) In the exercise of its licensing powers, the Authority shall consider -
 - (a) the safety, reliability and quality of the electricity service;
 - (b) the appropriateness of the premises from which the service is being offered or will be offered;
 - (c) the efficiency of the electricity service;

- (d) the conservation of resources;
- (e) the enhanced use of renewable sources of energy for the generation of electricity;
- (f) the suitability of the applicant, including technical, economic, financial, and organisational capacity to perform the activity;
- (g) the impact on the environment after consultation with the Department of Environment established under the Environment Protection Act 2002;
- (h) whether the licence, if granted, would be beneficial to and promote the public interest;
- (i) the promotion of competition; and
- (j) the provision of electricity service at a competitive price.

5. Decision of the Authority

(1) The Authority shall, in relation to an application made to it under section 4, communicate its decision to the applicant not later than 3 months -

- (a) from the date the application was made; or
- (b) from the date the applicant has submitted any additional information, where such information was required of the applicant, whichever is later.

(2) The validity of an application shall not be affected by reason only of the fact that the Authority has failed to communicate its decision within 3 months as provided under subsection (1).

6. Powers of Authority in relation to licences

(1) The Authority may, subject to this Act –

- (a) issue, transfer or renew a licence or amend the terms of a licence, on such terms and conditions as it thinks fit; or
- (b) reject an application.

(2) Where the Authority decides to issue, transfer or renew a licence or to amend the terms of a licence, or refuses to do so, it shall give written notice of its decision within 14 days of the making of its decision.

(3) Where the Authority rejects an application, it shall also state the reason for the rejection in the notice.

(4) No licence shall be issued, transferred or renewed, and no terms of a licence shall be amended by the Authority unless the applicant pays such fee as may be prescribed.

(5) Every licence shall specify –

- (a) the name and business address of the applicant;
- (b) the equipment , apparatus and premises of the applicant;
- (c) the electricity service to be provided; and
- (d) any term or condition imposed under subsection (1).

7. Amendment and revocation of licences

(1) Subject to subsection (2), the Authority may, on a complaint by any interested party or on its own initiative, amend the terms of, or revoke a licence on the ground that the licensee -

- (a) has contravened this Act;
- (b) has failed to comply with the terms or conditions of his licence;
- (c) has repeatedly failed to provide the electricity service for which it has been licensed;
- (d) is adjudged bankrupt or his undertaking is dissolved.

(2) Where the Authority decides to amend the terms or conditions of a licence or decides to revoke a licence under subsection (1), it shall give written notice of its decision to the licensee, stating –

- (a) the reasons for which it proposes to do so; and
- (b) the time, being not less than 14 days, within which the licensee may make written representations to object to the proposal.

(3) The Authority shall, after considering any representations made under subsection (2), communicate its decision and the reasons thereof in writing to the licensee not later than 3 months from the date a notice is served under subsection (2).

(4) Without prejudice to subsection (1), the Authority may forthwith suspend a licence on any ground specified in subsection (1) where -

- (a) it considers that it is in the public interest to do so; and
- (b) the urgency of the matter so requires.

- (5) A suspension effected under subsection (4) shall lapse after 21 days unless -
- (a) the suspension has been revoked prior to that period; or
 - (b) a notice has been served by the Authority under subsection (2) during that period.

8. Notification

(1.) The Authority shall give notice of any decision taken under section 6(1), 7(1) or 7(4) in the *Gazette* and in 2 daily newspapers.

(2) The Authority shall submit to the Minister, not less than once every 6 months, information on licences issued, transferred, renewed, amended, refused, suspended or revoked by the Authority.

9. Register

(1) The Authority shall cause to be compiled and maintained a register showing, in respect of each licensee, such particulars as the Authority may decide.

(2) The register shall, at all reasonable time, be open for inspection by the public.

10. Annual Fee

Every licensee shall in addition to the fee paid under section 6(4) pay such annual fee as may be prescribed.

11. Accounting records and information

(1) Every licensee shall, not later than 6 months from the end of its financial year, submit its audited annual accounting statement and balance sheet to the Authority.

(2) The Authority may, for the purposes of its functions, request a licensee to submit to the Authority any accounting records and financial, technical and commercial information, including copies of any contract entered into by such licensee, and the licensee shall comply with such request of the Authority within such time as the Authority may decide.

12. Separate accounts

(1) A licensee who is involved in more than one type of electricity service, or who provides more than one utility service shall keep separate accounts and prepare a separate accounting statement and balance sheet, in respect of each activity.

(2) A licensee shall cause its accounts to be prepared –

(a)_ in accordance with the International Accounting Standards; and

- (b) in accordance with any requirement which applies to the licensee's financial statements under the Financial Reporting Act 2004.

(3) A licensee who conducts any business activity in addition to the provision of an electricity service shall keep separate accounts for those distinct activities.

13. Inspection by authorised officer

(1) An authorised officer may -

- (a) require a licensee to produce his licence; and
- (b) at all reasonable times inspect any installation, apparatus or premises relating to a licence.

(2) Where a Magistrate is satisfied, by information upon oath, that there is reasonable ground to suspect that a person is contravening this Act or any regulations made under this Act, the Magistrate may grant a warrant to an authorised officer authorising and enabling him to -

- (a) enter any premises named in the warrant and search those premises or any person found therein;
- (b) inspect, remove and take copies of any documents found therein which he considers relevant; and
- (c) inspect and remove any installation or apparatus found therein which he has reason to suspect is operating in contravention of this Act or any regulations made under this Act.

14. Restrictions on licensees

(1) A licensee shall not, without the prior approval of the Authority -

- (a) acquire by purchase or otherwise, or affiliate with, the undertaking of any other licensee or merge or consolidate its undertaking with that of any other licensee;
- (b) assign, transfer or sell all or any part of the undertaking;
- (c) associate himself for the purposes of a joint venture or enter into any similar arrangement with regard to the provision of any electricity service; or
- (d) by transfer or otherwise, divest himself of any powers, rights or obligations conferred or imposed on him by this Act, a regulation made under this Act, any other enactment, or by any licence relevant to or for the purposes of carrying out any activity under this Act.

(2) Notwithstanding subsection (1)(b) and without prejudice to its powers, the Authority may allow a licensee to sell or transfer any property which is redundant or is no longer necessary to the undertaking.

(3) An act done in contravention of subsection (1) shall, notwithstanding anything to the contrary, be void *ab initio* and the Authority may suspend the licence on any terms it deems fit or revoke the licence.

15. Prohibited conduct

(1) Subject to this Act, a licensee shall not take any action or enter into any agreement which has the effect of -

- (a) eliminating or substantially damaging another licensee in the market in which he operates;
- (b) preventing the entry of any other person into that market; or
- (c) deterring any other licensee from engaging in any competitive conduct in such market.

(2) Subject to this Act, a licensee shall not discriminate between persons to whom its services are provided on the basis of -

- (a) any fee or charge for the service provided;
- (b) the performance characteristics of the service provided; or
- (c) any other term or condition on which the service is provided.

(3) Notwithstanding subsection (2), the Authority may authorise a licensee to charge different rates to different categories of customers for an electricity service provided.

(4) Without prejudice to subsection (1), a licensee shall not enter into or give effect to any agreement, arrangement or understanding with another licensee that has or is likely to have, the effect of fixing, controlling or maintaining the prices for, or granting any discount, allowance, credit or rebate for, any service or any product used in connection with such service.

PART III – OBLIGATIONS OF LICENSEES

16. Responsibility of licensees

(1) Every licensee shall -

- (a) maintain any installation, apparatus or premises relating to his licence in such condition as to enable it to provide safe, adequate and efficient electricity service;

- (b) subject to this Act, allow access to its installation, apparatus or premises only to those persons authorised by the licensee;
- (c) furnish the Authority with such reports, accounts and other information relating to its operations as the Authority may require;
- (d) comply with the terms and conditions attached to his licence;
- (e) comply with any written direction given to the licensee by the Authority in relation to the exercise of its rights and obligations under his licence; and
- (f) pay to the Authority such fees or charges as may be prescribed.

(2) A licensee who enters into a contract for an electricity service shall file a copy of the contract with the Authority within 15 days of entering into the contract and shall provide such information which the Authority may deem necessary to determine whether the contract is in the public interest.

17. Access Agreement

(1) A licensee may, with the agreement of another licensee, have access to the electricity facilities of the other licensee.

(2) Where the licensees are unable to agree on the terms of the access agreement within 60 days from the date of the request for access, either licensee may apply to the Authority to appoint an arbitrator.

(3) Where a dispute is referred to the Authority under subsection (2), the arbitrator shall, subject to such procedure as it may deem appropriate, determine the matter.

(4) An award made by the arbitrator under subsection (3) shall be deemed to be made under, and be regulated by, the Code de Procédure Civile wherever applicable.

(5) The award of the arbitrator shall be made within 30 days from the date of the appointment of the arbitrator.

18. Duty of licensee to customer

- (1) A licensee who provides electricity service to a customer, shall -
 - (a) comply with the standards of customer service specified in his licence or as may be prescribed;
 - (b) provide the customer with detailed information on the services offered;
 - (c) install an accurate meter for the purposes of recording the consumption of the customer;

- (d) make timely billing and allow the customer not less than 15 days from the date of the bill to pay the charges; and
 - (e) give prompt attention to any complaint from any customer.
- (2) A customer may appeal to the Authority where -
- (a) the licensee fails to respond to any complaint made to it under subsection (1);
 - (b) the licensee fails to comply with the standards of customer service as provided under subsection (1).
- (3) The Authority may make such rules as it deems fit for the proper discharge of its duties under this section, including rules with respect to procedures and costs.

19. Payment and suspension of service

(1) A licensee shall be responsible for collecting payments from a customer in accordance with the metering, billing and collection procedures as authorised by the Authority.

(2) A licensee may suspend or disconnect the supply of electricity to a customer where -

- (a) the customer fails to pay any outstanding fee or charge for the service within such delay as may be prescribed;
- (b) the customer has obtained the supply of electricity by misrepresentation or fraudulent means; or
- (c) the service is likely to endanger the safety of persons or property.

(3) Subject to section 43, where the cause for suspension or disconnection has ceased to exist, the licensee shall restore the service within a reasonable time after payment of such charges as may be prescribed.

(4) The Minister may, after consultation with the Authority, by regulations, exempt a body or person, whether corporate or unincorporated, from payment for any electricity service.

20. Customer protection standards

(1) The Authority may require a licensee to develop and submit to the Authority, for its approval, standards and procedures applicable to any matter relating to the protection of the interests of customers, including the quality of any service.

(2) Any standards and procedures approved by the Authority under subsection (1) shall be published by the licensee in such manner as the Authority may direct.

21. Performance standards and codes

(1) The Authority shall draw up, after consultation with the licensees and other interested parties, standards and codes in respect of the quality, reliability, efficiency and economy of electricity service supplied by a licensee.

(2) Any standards or codes drawn up by the Authority under subsection (1) shall -

- (a) be published in such manner as the Authority may direct;
- (b) be binding on a licensee.

22. Continuity of service

The Authority may require a licensee not to suspend the provision of any electricity service until such reasonable time as the Authority may direct where -

- (a) the service would be interrupted on account of the expiry of the licence;
- (b) the licensee has served notice of surrender of his licence; or
- (c) the licensee fails to ensure the timely transfer of its undertaking to another licensee.

23. Unforeseen events

The Authority may take such measures as it thinks fit to maintain or restore a continuous and an uninterrupted service where there has been a prolonged interruption in the electricity service to a significant segment of customers as a result of -

- (a) a force majeure;
- (b) any accident, sabotage or terrorist act affecting any undertaking;
- (c) unavailability of capacity to provide any electricity services; or
- (d) such other circumstances as may be deemed by the Authority to be an emergency condition.

PART IV - TARIFFS

24. Filing of tariff

(1) Every licensee shall file with the Authority the tariff for any electricity service that it is providing or it intends to provide, in the prescribed form and within such time as the Authority may determine.

(2) The Authority may require any licensee to prepare and file such information as it may require in connection with the determination of any tariff in accordance with this Act.

25. Tariff information

Every licensee shall keep at its offices copies of its tariff which has been the subject of a determination under this Part and such tariff shall be open to public inspection, free of charge, during the licensee's normal business hours.

26. Tariff determination

(1) Where a licensee has filed with the Authority any tariff or any amended tariff, the Authority shall determine the tariff in accordance with section 27.

(2) The Authority shall fix the date on which any tariff or amended tariff determined by the Authority shall be effective.

(3) The Authority shall promptly give public notice of any determination under section 27 in the *Gazette* and in 2 daily newspapers.

(4) A licensee shall not implement a tariff unless the tariff has been determined under this part.

27. Procedure for determination of tariffs

(1) The Authority shall -

- (a) upon the filing by a licensee of the tariff or amendment to the tariff for any electricity service, or on its own motion, determine whether the charge payable for any electricity service is in accordance with section 28;
- (b) hear and determine any complaint made by a customer relating to charges payable for any electricity service supplied by a licensee on the ground that such charges are unreasonable or contrary to law;
- (c) hear and determine any claim by a licensee for an amendment of the charges payable for any of its electricity service; and
- (d) hear and determine disputes between licensees as to any matter concerning the charges payable for electricity service provided by one licensee to another licensee.

(2) The Authority may -

- (a) seek any information or advice from; or
- (b) be assisted by,

any person who, in the Authority's opinion, possesses expert knowledge which is relevant in the determination of any tariff.

28. Principles applicable to tariff-determination

(1) For the purposes of a determination under this Part the Authority shall, *inter alia*, ensure that the tariff -

- (a) allows for the recovery of costs which are reasonably and necessarily incurred by the licensee in providing the electricity service, including -
 - (i) the costs of expansion, replacement and maintenance of the facilities of a licensee;
 - (ii) the costs of financing the activities of a licensee through loans and other borrowings; and
 - (iii) any other expenses, taxes, duties and levies imposed on the licensee;
- (b) provides a reasonable return on the capital invested in the undertaking of the licensee comparable to that for a company in a sector of comparable risk;
- (c) provides incentives for improvement of technical and economic efficiency and quality of the services;
- (d) contributes to conservation and efficient use of electricity;
- (e) avoids undue discrimination among customers;
- (f) phases out or reduces cross-subsidies between different categories of customers;
- (g) provides for subsidised charges or other financial assistance for certain categories of customers; and
- (h) allows the licensee to sustain an operating and capital investment regime and reasonable earnings for prudent operation and the provision of a quality and reliable electricity service.

(2) The Authority may -

- (a) in respect of a contract for any utility service negotiated between licensees or between a licensee and one or more large-volume customers, determine a specified tariff formula; or
- (b) in respect of the purchase in bulk supply for resale, determine a tariff on the basis of such competitive processes as it may decide and in conformity with this section.

(3) Notwithstanding subsection (1), in determining any tariff, the Authority may

- (a) differentiate among customers on the basis of differences in total monthly or annual consumption, the time periods for which the electricity service is provided, the load factors, power factors, voltage levels and such other criteria as may affect the cost of providing an electricity service;
 - (b) allow a tariff incorporating cross-subsidies for certain classes of customers necessary to enable such customers to pay for an electricity service, subject to recovery by the licensee of the relevant costs thereof as may be prescribed; and
 - (c) take into consideration the price and availability of electricity produced from non-conventional sources of energy.
- (4) Without prejudice to subsections (1) to (3), the Authority may authorise -
- (a) temporary charges pending a final tariff determination;
 - (b) a licensee to implement different charges in different phases,

provided that the Authority shall ensure that a licensee recovers the total amount due on the basis of a final determination made by the Authority.

29. Refunds

(1) A licensee shall not, directly or indirectly, claim from any other licensee or a customer, charges for an electricity service at a rate which exceeds the tariff as determined by the Authority for such service.

(2) A licensee who has received payments based on a rate that is in excess of any tariff as determined by the Authority, shall promptly refund, in the prescribed manner, the amount paid in excess

PART V- SAFETY

30. Code of Practice

(1) The Minister may prescribe a Code of Practice on electrical installation in buildings in the interests of public safety.

(2) The Inspectorate shall monitor compliance with the Code of Practice in accordance with this Act.

31. Inspectorate

(1) There is established for the purposes of this Act an Inspectorate which shall be a division of the Ministry responsible for the subject of public utilities.

(2) The Inspectorate shall consist of such number of public officers appointed to act as inspectors.

32. Powers of Inspectors

(1) An inspector may, with the consent of the owner or the occupier of any premises –

- (a) enter and inspect any such premises at any reasonable time of the day; and
- (b) where necessary, cause such tests to be carried out as may be necessary,

for the purpose of ensuring that the Code of Practice is being complied with.

(2) Where an inspector is satisfied that the electrical installations do not comply with the Code of Practice, he may serve a notice in such form as may be prescribed on the customer or such other person in charge of the premises or in occupation of the premises requiring the person to take such remedial action as set out in the notice within the time specified in the notice.

(3) For the purposes of subsection (2), the period specified in the notice shall not be less than 48 hours nor more than one month from the service of the notice.

(4) The Inspectorate may extend the period specified in a notice where it is satisfied that the extension is necessary for executing the remedial measures as set out in the notice.

(5) Notwithstanding subsection (2), where an inspector is of the opinion that the safety of the public or the life of a person is in danger, the inspector may –

- (a) by notice in writing, require a licensee to interrupt the supply of any service until such remedial measures, as the inspector may direct, are taken by the licensee, owner or occupier of the premises;
- (b) take such other urgent action as he considers appropriate.

(6) Where a Magistrate is satisfied, by information upon oath by an inspector, that there is reasonable ground to suspect that a person is contravening this Act or any regulations made under this Act or any provision of the Code of Practice, the Magistrate may grant a warrant to the Inspector authorising and enabling him to –

- (a) enter any premises named in the warrant and search those premises; and
- (b) inspect and remove any installation or apparatus found therein which he has reason to suspect is operating in contravention of this Act or any regulations made under this Act or the Code of Practice.

33. Service of notice

A notice under section 32 shall be served by delivering it or a true copy of it at the premises of the person to whom it is addressed or at his residence or by affixing it to some conspicuous part of the premises.

34. Failure to comply with notice

(1) Where a person on whom a notice has been served under section 32 fails to comply with the notice, he shall commit an offence and shall -

- (a) on conviction, be liable to a fine not exceeding 10,000 rupees; and
- (b) be ordered to execute such remedial measures as appropriate.

35. Power to remove obstruction and interference

(1) Where any tree or hedge -

- (a) obstructs or interferes with the construction, maintenance or operation of any existing electric line which is owned by any licensee; or
- (b) is likely to interfere with the maintenance or working of such line,

the licensee may give notice to the owner or occupier of the land on which the tree or hedge is growing, requiring him to lop or cut the tree or hedge so as to prevent the obstruction or interference.

(2) Where under subsection (1) a notice is served upon a person who, although the occupier of the land on which the tree or hedge is growing, is not the owner, a copy of the notice shall also be served upon the owner if known.

(3) Where a person upon whom a notice has been served under subsection (1) -

- (a) fails to comply with the notice within 7 days of receipt of the notice; and
- (b) neither the owner nor the occupier of the land gives a counter notice under subsection (4),

the licensee may cause the tree or hedge to be lopped or cut so as to prevent obstruction or interference.

(4) Where, within 7 days from the giving of notice under subsection (1), the owner or occupier of the land on which the tree or hedge is growing gives a counter notice to the licensee objecting to the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Authority.

(5) The Authority may, after giving the parties an opportunity of being heard, make such order as it thinks just, and any such order may empower the licensee, after giving such reasonable previous notice to any person by whom such counter notice was given of the commencement of the work as the order may direct, to cause the tree or hedge to be lopped or cut so as to prevent obstruction or interference.

(6) The licensee shall -

(a) ensure that the tree or hedge is lopped or cut in a workmanlike manner so as to do as little damage as possible to any tree, fence, hedge and growing crop, and shall cause the boughs lopped to be removed and in accordance with such reasonable directions given by the owner or occupier; and

(b) make good any damage done to the land.

(7) Any expense involved in the removal of any interference or obstruction under subsection (5) shall be borne by the licensee.

(8) Where, for the purpose of the construction or maintenance of any electric line, it is necessary to fell any tree, this section shall apply to the felling of trees in like manner as it applies to the lopping of trees.

36. Protection of telecommunications and electric lines

(1) A licensee shall take all reasonable precautions in constructing, laying down or placing its electric line and other electrical facilities and in operating its undertaking so as not to injuriously affect -

(a) the operation of any telecommunications line or system or any electric line or electrical facilities;

(b) any line used for providing multimedia services, electric signalling communication services or any other services.

(2) Notwithstanding subsection (1), a licensee shall not be responsible for any damage caused to any telecommunication line or system or any electric line or electrical facilities or any line used for providing multimedia services, electric signalling communication services or any other services installed on the licensee's poles or supports without the licensee's written approval.

(3) Before a licensee commences to construct or lay down or place any electric line or other electrical facilities, or to carry out other work for the supply of electricity whereby any telecommunications line or system or electric line or electrical facilities or any line used for providing multimedia services, electric signalling communication services or any other services may be injuriously affected, the licensee shall give reasonable written notice to any affected party.

(4) Any notice given under subsection (3) shall specify the course and nature of the work and be accompanied by such drawings as may be necessary.

(5) The Authority shall determine -

- (a) whether a licensee has, in constructing, laying down or placing any electric lines or other electrical facilities or in operating its undertaking, complied with this section;
- (b) whether the operation of any telecommunication line or system or any electric line or electrical facilities or any line used for providing multimedia services, electric signalling communication services or any other services is injuriously affected.

(6) Where the Authority finds that the electric line or electrical facilities was placed in an unreasonable proximity to any existing telecommunication line or system or any electric line or electrical facilities or any line used for providing multimedia services, electric signalling communication services or any other services, the Authority may direct the licensee to make any alterations in, or additions to, its system so as to comply with this section, and the licensee shall make those alterations or additions accordingly.

(7) Where a licensee fails to comply with this section, it shall commit an offence and shall, on conviction, be liable for each default to a fine not exceeding 50,000 rupees together with a fine not exceeding 1,000 rupees for each day during which the default continues.

(8) Notwithstanding subsection (7), a licensee shall not be subject to any penalty where -

- (a) the cause of the failure to comply was an emergency and the licensee complied with this section so far as was reasonable under the circumstances; or
- (b) the failure to comply was due to the fact that the licensee was ignorant of the position of the telecommunication line or system or any electric line or electrical facilities affected and that the ignorance was not due to any negligence or wilful misconduct on the part of the licensee.

37 Wayleaves-occupier's liability

(1) An occupier of land for which a wayleave has been granted shall not be liable for any damage caused to a licensee's lines located on or under such land which occurs by reason of the occupier's activity, provided that all reasonable precautions have been taken by the occupier of the land to avoid damaging the licensee's lines.

(2) The occupier shall, at all reasonable times, grant access to the licensee for the purpose of attending to his works.

38. Breach of licence and safety

(1) Without prejudice to the other powers of the Authority, where the Authority is of the opinion that -

- (a) a licensee has failed to comply with the terms and conditions of its license; and
- (b) such failure constitutes a danger to public safety,

the Authority may, by order, require the licensee to take such action as it considers necessary within such period as is specified in the order.

(2) Where the licensee fails to comply with an order made under this section, the licensee shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees for every day during which the default continues.

(3) The Authority may, by order, prohibit the use of any electric line or other electrical facilities as from such date as may be specified in that order until the order is complied with, or for such time as may be specified, and where the licensee fails to comply with the order, the licensee shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees for every day during which the default continues.

PART VII – MISCELLANEOUS

39. Entry on premises

(1) A licensee may, subject to reasonable notice being given to the owner or occupier of a property and upon the consent of the owner or occupier, enter the property for the purposes of installation of any electric line or electrical facilities on that property, or the maintenance of such electric line or electrical facilities.

- (2)
 - (a) Where the Authority, upon a representation made by a licensee, is of the view that it is in the public interest that a licensee be granted a right of entry on any property, the Authority may apply to the Judge in Chambers for an order granting the licensee the right to enter such property.
 - (b) The application shall specify the property and the purpose for which the order is sought.
 - (c) Where an order is granted, it shall specify the property and the purpose for which it is granted.
 - (d) The cost of the application shall be borne by the licensee.

(3) Where the property is injuriously affected or has suffered some depreciation as a result of the installation or maintenance of any electric line or electrical facilities, the licensee shall compensate the owner of the property for such injury or depreciation.

(4) Where there is no agreement on the amount of compensation referred to in subsection (3), the licensee shall refer the matter to the Authority, which shall determine the amount of compensation to be paid to the owner.

(5) The Authority may be assisted by such person with expertise in property valuation as it may deem necessary, in exercising its powers under subsection (4).

(6) Where a person is dissatisfied with the determination of the Authority, he may appeal to the Tribunal within 21 days of the determination.

(7) The cost of the determination and of any appeal to the Tribunal that may be incurred by the Authority shall be borne by the licensee.

40. Enclosures

(1) Subject to any licence or any regulations made under this Act, a licensee may erect on any public road such enclosures as may be necessary for purposes in connection with the supply of electrical energy.

(2) No such enclosures shall be erected above ground except with the consent of the Authority and the appropriate authority responsible for the road.

(3) An enclosure referred to in subsection (1) shall –

(a) be for the exclusive use of the licensee;

(b) except as the Authority otherwise orders, be under its sole control; and

(c) be used by the licensee only for the purpose of transmission and distribution of electricity.

(4) Every such enclosure shall be constructed and maintained by the licensee in such manner as not to constitute a source of danger to the public.

(5) The Authority may after consultation with the relevant local authority, determine the hours during which a licensee shall have access to the enclosure.

(6) Where a licensee removes or displaces or keeps removed or displaced the upper surface or covering of any enclosure during any hours not so determined and without the consent of the Authority, the licensee shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees together with a fine not exceeding 1,000 rupees for each day during which the default continues.

(7) The licensee shall not commit an offence under subsection (6) where he satisfies the Court that there was an emergency and that it had done all that was reasonably possible under the circumstances to avoid the commission of an offence.

41 Offences

(1) Any person who -

(a) fraudulently obtains or makes use of any electricity service with intent to avoid payment of any applicable fee or charge;

- (b) by means of any apparatus or device connected to any electrical facilities maintained or operated by a licensee -
 - (i) defrauds the licensee of any fee or charge properly payable for any electricity service;
 - (ii) fraudulently installs or causes to be installed an access to any electrical facilities of a licensee;
- (c) wilfully damages, interferes with, removes or destroys any electrical facilities maintained or operated by a licensee; or
- (d) establishes, maintains or operates electricity service or any undertaking without a licence or in breach of the terms or conditions of a licence,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) Any person who, in any manner, without lawful authority or excuse, the proof of which shall lie on him –

- (a) abstracts, consumes or uses electricity;
- (b) destroys, breaks down, damages, tampers with, renders useless, or alters the index of any meter or other instrument used on or in connection with any installation set up by a licensee for recording the input, output or consumption of electricity; or
- (c) prevents any such meter or other instrument from duly recording the input, output or consumption of electricity,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) In any proceedings against a customer under this section –

- (a) the fitting of any device to, the absence of any part from, and the interference with, any installation set up for recording the input, output or consumption of electricity; or
- (b) the absence of, or interference with, any seal affixed to any meter,

shall be evidence that the customer was himself responsible for –

- (i) abstraction, consumption or use of electricity;
- (ii) the alteration of the index of any meter or instrument;
- (iii) the prevention of any meter from duly recording the input, output or consumption of electricity,

unless the customer proves to the satisfaction of the Court that he has not been privy to any of the acts specified in paragraphs (a) and (b).

42. Right of licensee to disconnect

(1) Where a person is convicted of an offence under section 41, the licensee, to the prejudice of whom the offence has been committed, may disconnect the electricity service offered to the convicted person.

(2) A person to whom a licensee ceases to provide a service under subsection (1) shall not be provided with such electricity service unless he pays to the licensee such charges as may be approved by the Authority.

(3) Any person, other than a licensee referred to in subsection (2), who by any means knowingly provides any electricity service to the premises of a person who has been the subject of a disconnection under subsection (1) shall commit an offence and shall, on conviction, be liable to a fine of not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years.

43. Jurisdiction

Notwithstanding –

- (a) section 114 of the Courts Act; and
- (b) section 72 of the District and Intermediate (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try all offences under this Act or any regulations made under this Act, and may impose any penalty provided under this Act or any regulations made under this Act.

44. Regulations

(1) The Minister may, after consultation with the Authority, make such regulations as he thinks fit for –

- (a) specifying the limits within which and the conditions under which a supply of electricity is to be compulsory or permissive;
- (b) ensuring a proper and sufficient supply of electrical energy;
- (c) securing the safety of the public;
- (d) the coordination and improvement of the supply of electricity generally;
- (e) the carrying out of the duties of the licensees and customers in relation to the supply and use of electricity;
- (f) the generation, transmission, distribution and use of electricity; and

- (g) the purposes of this Act.
- (2) Any regulations made under this section may provide -
 - (a) for the levying of fees and the taking of charges; and
 - (b) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

45. Transitional provisions

(1) Notwithstanding anything contained in this Act, the Central Electricity Board established under the Central Electricity Board Act shall be deemed to have been licensed under this Act and such licence shall be valid for a maximum period of 3 years from the day this Act comes into operation.

(2) Every permit or authorisation issued prior to the coming into operation of this Act shall remain valid for the unexpired period.

(3) This Act shall not affect the terms of any concession or power purchase agreement entered prior to the commencement of this Act insofar as the provisions of any electricity service is concerned provided that the agreement is still valid at the commencement of this Act.

46. Repeal

The Electricity Act is repealed.

47. Commencement

(1) This Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be provided for the coming into operation of different sections of this Act.

SCHEDULE
(section 3)

LICENCES FOR ACTIVITIES

1. Generation licence

The Authority may issue a generation licence authorising the licensee to construct, own, operate and maintain one or more generating stations for purposes of generating and supplying electricity to any licensee or to any eligible customer.

2. Transmission licence

The Authority may issue a transmission licence authorising the licensee to carry on the construction, operation and maintenance of the transmission system and to transmit electricity.

3. System operation licence

The Authority may issue a system operation licence authorising the licensee, as the system operator, to exercise control over the operation of generating stations and transmission lines within each control area designated in the licence.

4. Distribution licence

The Authority may issue a distribution licence authorising the licensee to construct, operate and maintain a distribution system.

5. Bulk supply licence

(1) The Authority may issue a bulk supply licence authorising the licensee to engage in the bulk supply of electricity.

(2) Where the Authority issues a bulk supply licence it may require the licensee to purchase electric power generated from bagasse, other renewable electrical energy sources or co-generation plants consistent with policy directives of the Minister.

(3) Where the Authority imposes a requirement in terms of paragraph (2), the Authority shall ensure that the reasonable costs incurred by the licensee as a result of the requirement are recovered by the licensee.