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ACT NO .12 OF 2002

LESOTHO ELECTRICITY AUTHORITY ACT 2002

An Act to provide for the establishment of the Lesotho Electricity Authority; to regulate and supervise activities in the electricity sector; and to make provision for the restructuring and the development of the electricity sector in Lesotho and for connected matters.

Enacted by the Parliament of Lesotho.

PART I - PRELIMINARY**Short title and commencement**

1. This Act may be cited as the Lesotho Electricity Authority Act 2002 and shall come into operation on such a date as the Minister may, by notice published in the Government Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires -

"Act" means the Lesotho Electricity Authority Act 2002;

"ancillary services" means services which may be required from time to time for system security and stability and which are identified in a transmission code;

"appointing authority" means, in the case of members of the Board of the Authority, the Minister or any other body or person vested by the Minister with powers to make appointments;

"Authority" means the Lesotho Electricity Authority established under section 3;

"Board" means the Board of the Lesotho Electricity Authority established in accordance with section 4;

"bulk supply" means the supply of electricity in bulk by an electricity power producer to another electricity power producer or any electricity supplier;

"by-pass sales" means sales of electricity by providers of production capacity to persons other than LEC;

"calendar year" means the period of twelve months commencing on the 1st of January and ending on the 31st of December of any year;

"Chairman" means the chairman of the Board;

"claimant" means a person who refers a dispute for arbitration pursuant to item 2 of Schedule 2;

"court" means a court of competent jurisdiction;

"distribution" means the transport of electricity by means of a distribution system which consists of electric lines, electric plant, transformers and switchgear and which is used for conveying electricity to final consumers;

"distribution code" means the distribution code required to be prepared for and maintained by a licensed distribution system operator pursuant to the terms of its licence which prescribes standard technical rules to be observed by all those connected to a distribution system for the connection to the use and operation of that system;

"distribution system" means the system which consists, wholly or mainly of low voltage lines and electrical plant and which is used for conveying electricity from a substation to final consumers;

"distribution system operator" means the operator of the distribution system;

"electricity grid" means the integrated electricity transmission and distribution systems currently owned and operated by LEC from the date of commencement of this Act;

"eligible customers" means those persons, or classes of persons, designated as such in an order made by the Minister pursuant to this Act;

"exemption" means an exemption from the requirement to hold a licence issued by the Authority pursuant to this Act;

"final order" means a final order made or confirmed under Section 76;

"Government" means the Government of Lesotho;

"Grid Code" means the code required to be prepared for and maintained by LEC or its successor company or other transmission licence holders pursuant to the terms of its licence which prescribes standard technical rules to be observed by all those connected to a transmission system for the connection to and use and operation of that system;

"LEC" means Lesotho Electricity Corporation or its successor company;

"licence" means a licence issued by the Authority pursuant to this Act;

"licensee" means a holder of a licence issued under this Act;

"licensed distribution operator" means a person authorised pursuant to this Act to carry on the distribution of electricity.

"licensed operator" means the holder of a licence issued pursuant to section 48;

"licensed production operator" means the holder of a generation licence granted by the Authority pursuant to this Act;

"licensed transmission operator" means the holder of a licence granted by the Authority pursuant to this Act to carry on the transmission of electricity;

"Minister" means the Minister responsible for Natural Resources;

"notice" means a notice in writing issued pursuant to this Act;

"off-grid systems" means electricity systems not connected to the electricity grid;

"on-grid systems" means electricity systems connected to the electricity grid;

"output" means the electricity produced by a production facility;

"parties" means the parties to a regulatory dispute;

"person" means any individual, partnership, joint venture, association, trust, company or corporation;

"pleadings" means the written admissions and demands of the parties;

"preliminary order" means a preliminary order made under section 72;

"premises" means any land, building or structure;

"production capacity" means electricity generation capacity;

"production facilities" means facilities for the generation of electricity;

"register" means the register to be prepared by the Authority pursuant to section 25;

"regulated activities" means the activities listed in Section 39;

"regulatory dispute" means a dispute between persons conducting a regulated activity and the Authority referred to arbitration pursuant to section 88;

"relevant assets and liabilities" means all physical assets, contracts, rights and liabilities used for the purpose of electricity generation, transmission and distribution;

"respondent" means the party to a regulatory dispute not being the claimant;

"self supply" means the supply of electricity by a person to himself, his employees or business;

"state" means the Government of Lesotho;

"Streetworks" means any kind of work (including but not limited to, installation, maintenance, repair or alterations) to, electric lines or electric plants and all works associated with or incidental thereto (including but not limited to, opening and breaking up streets, sewers or tunnels under streets, tunnelling or boring and removing earth and other materials);

"supply" means, in relation to electricity, a supply through electric lines to final consumers for consumption;

"transmission" means the transport of electricity by means of a transmission system, that is to say, a system which consists, wholly or mainly, of high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another or to or from any interconnector or to final customers but does not include any such lines which the Authority may, from time to time, specify as being part of the distribution system but includes any interconnector owned by a licenced transmission operator; and

"transmission code" means the transmission code required to be prepared for and maintained by any licensed transmission operator pursuant to the terms of its licence which prescribes standard technical rules to be observed by all those connected to a transmission system for the connection to, and the use and operation of, that system.

PART II

REGULATION AND SUPERVISION

Establishment of the Lesotho Electricity Authority

3. (1) There is established a body to be known as the Lesotho Electricity Authority for the electricity sector in Lesotho for the purpose of performing the functions and carrying out the duties given to it under this Act.

(2) The Authority –

- (a) is a body corporate with perpetual succession;
- (b) shall have the power to enter into contracts;
- (c) may acquire, hold and dispose of movable or immovable property;
- (d) may sue or be sued in its corporate name;
- (e) may perform the duties imposed on it and exercise the powers conferred on it by or under the Authority.

(3) The Authority may be a separate regulatory Authority or part of a multi-sectoral Authority.

Composition of the Board

4. (1) There shall be a Board which shall perform and exercise all powers and duties of the Authority.

(2) The Board shall consist of not less than four members on a part-time basis, one of whom shall be the Chairman appointed by the appointing authority through the competitive and transparent procedure.

(3) The appointing authority shall also appoint the Chief Executive using the same competitive and transparent procedure.

(4) The appointing authority shall invite prospective candidates by public advertisement in local and international newspapers.

(5) The shortlisting, evaluation and selection of candidates for the members and the Chief Executive shall be undertaken by an Appointments Recommendation Committee, which shall consist of two nominees of

Government, two representatives of the electricity industry, and two representatives of consumer groups.

(6) The shortlist made pursuant to subsection (5) shall contain a minimum of two names for the position of Chairman, for the position of Chief Executive and for the vacant Member's position.

(7) The appointing authority shall only make an appointment where a candidate receives an absolute majority of votes.

(8) Where there is a tie after three consecutive sittings by the Appointments Recommendation Committee, the Appointing Authority shall appoint one of the remaining candidate for the position of chairman, for the position of chief executive and for the vacant member's positions.

(9) Where no candidate receives an absolute majority of votes on the first round, the lowest ranked candidates shall drop out and the remaining candidates voted on once more. The process shall continue until a candidate receives an absolute majority.

(10) A person shall be disqualified from being a member of the Board or Chief Executive –

- (a) if he is an unrehabilitated insolvent;
- (b) if he has been convicted of a crime and sentenced to imprisonment;
- (c) if he has any pecuniary interest, direct or indirect, in an undertaking by a licenced operator otherwise than as a rate payer;
- (d) if he is an employee of a licenced operator or any off-grid operator or any person whose activities are subject to the provisions of this Act.

(11) The appointment of a person as a Member of the Board or as Chief Executive shall be for a period of three (3) years, which may be renewed for one further term of three (3) years.

(12) The first Board Members shall be appointed for periods of one, two, three years respectively, and the first Chairman shall be appointed for three (3) years.

(13) Persons who have previously served as Members are eligible as candidates for Member's positions following a minimum period of five (5) years since their retirement from the position of Member.

Qualifications of Board Members

5. The appointing authority shall, in appointing members of the Board, appoint persons who collectively have experience and qualifications in any of the following areas: industry, commerce, law, accountancy, economics, engineering, electricity technology and any other experience relevant to the regulation of the electricity sector.

Resignation of Board Members

6. (1) A Board member may, at any time, resign his office by giving not less than three months notice to the appointing authority and the Board simultaneously.

(2) A Board member shall be deemed to have given the notice referred to in subsection (1) if he fails to attend the meetings of the Authority for three consecutive months without giving a reason or an acceptable explanation for his absence to the Chairman.

Conduct of Board Members

7. Members of the Board shall conduct themselves in accordance with rules of conduct to be prescribed by the Minister.

Removal from office

8. The appointing authority shall, subject to review by the tribunal appointed in accordance with section 9, have power to remove any person from acting as a Board Member on the grounds of -

- (a) physical or mental incapacity which prevents that Member from carrying out his duties;
- (b) conviction of a criminal offence with a sentence of imprisonment;
- (c) proven maladministration by that Member;
- (d) proven serious misconduct of that Member; or
- (e) personal bankruptcy; and

- (f) gross incompetence in exercise of his duties.

Appointment of a Tribunal

9. (1) The appointing authority may appoint a three member tribunal, headed by a judge or such other person who is qualified in law to investigate allegations and review any decision against a Board member.

(2) The appointing authority shall act in accordance with the recommendations of the tribunal.

Suspension of Board Members

10. (1) The appointing authority shall, in writing, suspend from office, a member of the Board against whom an investigation by a tribunal has been set up or criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed.

(2) Where a Board member has been suspended on the grounds specified in subsection (1) above, such suspension shall be deemed to be temporary until confirmed by the tribunal.

Notice of Termination

11. The appointment of any member of the Board shall be terminated by three month's notice in writing given by the appointing authority.

Filling of vacancies on death, resignation or removal from office

12. Where a vacancy occurs in the membership of the Board either due to the death, resignation or removal from office of a Board member, the appointing authority shall appoint a person to take the place of the Board member who has been removed or has died or resigned, for the period that would otherwise have been served had such member not resigned, died or been removed.

Filling of vacancies on recusal, suspension or unavailability to hear specific matters

13. (1) Where three or more Board members have recused themselves with regard to any one or more pending matters, or where three or more Board members have been duly suspended for any reason, or where three or more Board members are unavailable to hear any specifically designated matter due to any combination of recusals or suspensions, the appointing authority shall appoint persons to hear such specifically designated matter in the place and stead of the recused or suspended members.

(2) A person appointed pursuant to subsection (1) shall have the power, authority and responsibility of a member with regard to the specifically designated matter only.

Exclusive powers

14. The Authority shall have sole and exclusive authority to regulate the electricity sector in Lesotho as provided generally in this Act and shall have full powers to regulate all licensed operators economically and technically in accordance with this Act.

Internal delegation

15. The Board may appoint employees and establish sub-committees as it sees fit for the purposes of carrying out its duties.

Advisory committees

16. (1) The Board may, for the efficient discharge of its duties, establish advisory committees which shall consist of persons possessing appropriate expertise to fairly represent views and interests of users and operators.

(2) Advisory committees established in accordance with subsection 1 shall advise Board members and staff of the Authority.

Conduct of business

17. The Authority shall conduct its business in accordance with its constitution as set out in Schedule 1.

Procedure and management

18. The Authority shall, by decision, determine its own procedure and management.

Funding

19. The Authority shall have an independent budget proposed by the Chairman to be approved by its Board and laid before Parliament as an information item and shall be funded by the payment of fees by those persons awarded licences pursuant to this Act and any appropriate levy on consumers.

Independence of the Authority

20. The Authority shall be independent in the performance of its functions and duties under this Act and shall not be subject to the direction and control of the Government or any person, corporation or authority, subject to it having due regard to overall Government policy as embodied in legislation from time to time.

PART III**DUTIES AND FUNCTIONS OF THE AUTHORITY****General duties**

21. (1) The Authority shall, without limiting the generality of this section, have a duty to exercise its functions and powers under this Act in the manner which it considers best calculated to -

- (a) promote the expansion of electricity supply in Lesotho, where this is economic and cost-effective;
- (b) ensure the operation and development of a safe, efficient and economic electricity sector in Lesotho;
- (c) ensure the security of the supply of electricity in Lesotho;
- (d) ensure the promotion of sustainable and fair competition in the electricity sector where it is efficient to do so;
- (e) protect the interests of all classes of consumers of electricity as to the terms and conditions and price of supply;
- (f) ensure, so far as it is practicable to do so, the continued availability of electricity for use in public hospitals; and centres for the disabled, aged and sick;
- (g) ensure the availability of health and safety guidance in relation to electricity supply to the public;
- (h) ensure the financial viability of efficient regulated electricity undertakings;
- (i) ensure the collection, publication, and dissemination of information relating to standards of performance by licensed operators and on the electricity sector in Lesotho for use by the industry, consumers and prospective investors;

- (j) participate, in consultation with the Minister, in regional and international matters relating to the regulation of electricity in Lesotho; and
- (k) develop annual supply targets for the purpose of ensuring that such services are accessible to the widest number of electricity users.

(2) In exercising duties referred to in subsection 1, the Authority shall have regard to -

- (a) national and international environmental standards as they affect the electricity sector and consult with environmental bodies in Lesotho where necessary or expedient in relation to consumer and industry interests;
- (b) the interests of those persons whose lives may be endangered by the lack of electricity and others with special needs in connection with the cost and method of supply of electricity and the use of appliances and fittings;
- (c) developments in respect of regional cooperation in electricity regulation in the Southern African Development Community Countries.

General functions of the Authority

22. (1) The Authority shall -

- (a) review the provision of electricity supplies in Lesotho;
- (b) issue, monitor, and enforce licences pursuant to this Act;
- (c) establish, maintain, review and amend as appropriate technical and performance standards for the electricity sector and monitor and enforce compliance with such technical standards;
- (d) establish, maintain, review and monitor safety standards for the electricity sector and monitor and enforce compliance with such safety standards;
- (e) establish, maintain, review, monitor, and amend, as appropriate, customer care standards;

(f) regulate prices charged to consumers of electricity where these are not supplied on a competitive basis, and the methods by which they are charged;

(g) approve, modify, monitor and enforce terms and conditions for the supply of electricity to consumers;

(h) approve and propose modifications to the transmission codes and to the distribution codes;

(i) make rules, by-laws and orders as provided elsewhere in this Act;

(j) resolve disputes between licence holders and between licence holders and their consumers or future consumers to the extent that such disputes cannot be resolved by the complaints procedures of the licence holders themselves; and

(k) monitor the operation of the 'Muela hydropower station; and

(l) have the option to establish a fund into which providers of electricity services shall pay any fees that the Authority may prescribe as universal access development fees; or the Authority may make it a condition of a grant or a licence that every provider of electricity services shall establish a universal access fund, the proceeds of which shall solely be used with the Authority's approval for the development and expansion of its electricity service infrastructure in areas where there are no services and to provide access to widest users.

(2) In relation to off-grid electrification, the functions of the Authority shall include -

(a) the monitoring and enforcement of technical standards;

(b) the overseeing of all contractual arrangements;

(c) the resolution of disputes;

(d) the facilitation of efforts to expand rural electrification; and

- (e) assistance with analytical aspects of the tariff setting and collections process.

Exercise of functions

23. In carrying out its functions under this Act, the Authority shall -

- (a) act in as consistent a manner as practicable;
- (b) impose on licensed operators the minimum restrictions which are consistent with the proper performance of its functions;
- (c) take into account the need for licensees to finance and plan their businesses with a reasonable degree of assurance;
- (d) ensure that, unless its duties under this Act require otherwise, licences granted to different persons in relation to each type of regulated activity are substantially the same; and
- (e) wherever practicable to do so, consult prior to making decisions and give in writing its decisions together with the reasons for reaching such decisions.

Review and setting of tariffs rates and charges

24. (1) An electricity service provider shall not -

- (a) offer service unless it has, prior to offering such services, filed its tariffs and rates with the Authority; and
- (b) make changes except as provided in the section below on rates and charges or other terms of the service after applicable tariffs have been filed with the Authority.

(2) Where the Authority permits service to be offered under contract as well as under tariff, the tariff provision shall prevail in the event of a conflict or dispute between the tariff and a contract.

(3) An electricity service provider shall submit tariff proposals in writing to the Authority, of the tariffs rates and charges it intends to apply for the use of its systems, facilities and others.

(4) Tariffs shall contain all relevant information concerning rates and charges for services, including deposits, non-recurring charges, monthly charges as well as terms and conditions applicable to the provision of services including rights and remedies available in the event of unauthorised charges or other disputes or claims over billing or provision of services.

(5) Tariffs proposed by the licensee shall be effective one calendar month after filing with the Authority unless the authority issues a counter proposal or notice of modification to the licensee within the calendar month period.

(6) Notice of any such filing shall be –

- (a) published by the Authority in all newspapers within the country; and
- (b) publicised using other local media for public information to allow electricity consumers to comment on the reasonableness of the tariffs.

(7) Any failure to make a counter proposal, modification or to approve the proposed tariffs shall entitle the licensee making the proposal to impose the tariff proposed and the Authority shall be deemed to have approved the proposed tariff and shall publish it in the Government Gazette.

(8) Where the Authority and a licensee fail to reach an agreement on the proposed tariff and counter proposal, the decision of the Authority shall be final.

(9) All tariff proposals approved in terms of this Act shall come into force and effect from the date of such approval.

(10) A licensed electricity service provider shall make tariffs available to the public.

(11) All tariffs filed with the Authority shall be kept complete, accurate and up to date.

(12) After a tariff has been filed with the Authority and has come into force and effect, no changes may be made in the rates, charges or other terms of service relating to all the services provided under the tariff, except upon the filing and review of tariffs as provided in this Act.

(13) Tariffs shall –

- (a) be accompanied by all accounting and costing information as the Authority may require; and
- (b) comply with all other requirements and conditions as shall be applicable to the corresponding licensee.

Derogations

25. (1) The Authority may, to the extent that its duties under this Act require issue to licensed operators -
- (a) specific derogations for periods and on terms specified in the derogation, from the performance of particular licence conditions, to the extent specified in the derogation; and
 - (b) general derogations in favour of some or all classes of licensed operator specified in the derogations for periods and on terms specified in the derogation, of particular licence conditions, to the extent specified in the derogation.
- (2) The Authority may revoke, modify or extend any derogation or general derogation granted by it pursuant to this Section.

Public register

26. (1) The Authority shall maintain a register, which shall contain the following information :
- (a) every licence, licence holder and licence exemption issued and the particulars thereof;
 - (b) every modification, verification, revocation or surrender of such licence;
 - (c) every requirement imposed, consent or approval given by the Authority under the terms of any licence;
 - (d) every preliminary or final order and revocation of such order; and
 - (e) every derogation from performance of a condition of a licence issued by the Authority.
- (2) In entering information into the register, the Authority shall have regard for the need, in so far as is possible and consistent with the

commercial interest, to exclude information which may in its opinion unduly prejudice a person or class of persons and licence holders or class of licence holders.

Public inspection of register

27. (1) The register shall be open for inspection by members of the public at such times and on such days as shall be determined by the Authority.
- (2) Any person may, on payment of a fee to be determined by the Authority, require the Authority to supply him with a copy or an extract, certified by it as a true copy or extract, from any part of the register.

Reporting

28. (1) The Authority shall, within two months of the end of each calendar year, make a report to the Minister who shall place it before Parliament within fourteen days of receipt of the report;
- (2) The report made pursuant to subsection (1) shall contain the following -
- (a) activities of the Authority during that year;
 - (b) developments during that year in respect of matters which fall within the scope of the Authority's functions;
 - (c) matters investigated under section 31 of this Act;
 - (d) proposed major activities during the next year;
 - (e) the development of private sector participation in the electricity sector; and
 - (f) the progress of the electrification programme throughout the country.
- (3) The report shall be laid before Parliament and Board members shall be available to answer questions from members of Parliament on the contents of the report.
- (4) The Authority shall make a copy of the report referred to in subsection 1 available to any person who may, upon payment of such fees as the Authority may determine, request it.

Licensing criteria

29. The Authority shall -

- (a) establish and keep under review specified objective criteria to ensure that all prospective licensed operators are fit and proper persons to be issued with a licence or exemption; and
- (b) make a copy of the criteria available to any interested person who may request it.

Appointment and duties of Inspectors

30. (1) The Authority may, on such terms as it thinks fit, appoint qualified persons to be inspectors.

(2) Inspectors appointed in accordance with subsection (1) shall -

- (a) inspect and test, periodically and in special instances, plant and equipment belonging to persons authorised by licence to conduct a regulated activity;
- (b) examine, periodically and in special instances, the generation, transmission, distribution and supply of electricity by licensed operators;
- (c) inspect and test, where required, such plant and equipment at consumer's premises; and
- (d) perform such other functions as the Authority may determine.

(4) Where probable cause exists to believe that a violation of this Act has been committed, the inspector or agent of the authority appointed to carry out any inspection or investigation may -

- (a) enter the premises and carry out his inspection or investigation; and
- (b) take or seize any document or information he may require from any person under inspection or investigation.

(4) The existence of a probable cause referred to in subsection (1) shall be documented in writing before any inspection.

(5) Inspectors of the Authority shall be issued credentials which they shall present upon seeking entry to premises.

(6) A person who contravenes this section or impersonates an inspector of the Authority under this section commits an offence.

(7) The Authority may make rules pertaining to the conduct of inspectors in the course of their duties under this section.

Technical standards and type approval

31. (1) The Authority may establish technical standards applicable to electricity equipment and customer premises equipment to ensure against harm to the electricity networks or services or to public health and safety or the environment.

(2) The Authority may prescribe rules specifying the types of electricity equipment which may be used for providing an electricity service for operating electricity equipment or connecting to the electricity grid or an electricity generation, transmission or distribution system.

(3) A person who provides an electricity service or supplies electrical equipment shall not use or supply, as the case may be, any equipment that does not comply with the technical standards as prescribed by the Authority.

(4) The Authority may, by rules, type, approve electricity equipment by reference to a type approval used in another country.

Access to premises by Inspectors

32. A person conducting a regulated activity shall afford the inspectors unrestricted access to all plant, equipment and premises used for the purposes of the regulated activity on production of identification.

Authority's duty to investigate

33. (1) For purposes of this section, an enforcement matter means any matter in respect of which any of the functions of the Authority under this Act are or may be exercisable.

(2) The Authority shall investigate any matter which appears to be an enforcement matter and which is the subject of a representation to it other than where it considers such representation frivolous by a person having an interest in the matter.

General powers of the Authority

34. The Authority shall, without limiting its powers, issue such administrative orders and rules as are necessary to -

- (a) appoint, remove, promote and discipline staff;
- (b) conduct the administrative operations of the Authority;
- (c) establish its own internal organisation including creation of divisions and offices as it may deem necessary for the exercise of its powers;
- (d) delegate its authority, which shall not extend to licencing, to the Chairman, divisions and offices of the Authority;
- (e) grant, amend and revoke licences;
- (f) set technical standards and procedures to monitor adherence to standards;
- (g) contract for services of external professional consultants and advisors as may be necessary and prudent to the conduct of the business of the Authority;
- (h) establish and, as required, amend the fees and other charges applicable under this Act;
- (i) investigate possible violations and otherwise enforce the provisions of this Act.

Other administrative orders

35. The Authority shall, by notice published in the Gazette, issue such other administrative orders and rules as are necessary for exercising its powers and performing its duties in the implementation of policies under this Act.

Powers to make rules and by-laws

36. The Authority may, in consultation with the Minister, make such rules and by-laws as it sees fit for the purposes set out in this Act, and such rules and by-laws shall be published in such manner as may be best calculated to bring them to the attention of the persons affected thereby.

Supply rules and by-laws

37. Rules and by-laws made pursuant to section 36 may be made for the following purposes :

- (a) securing regular and efficient supplies of electricity;
- (b) protecting the general public from danger related to electrical works and installations;
- (c) eliminating or reducing the risk of personal injury;
- (d) requiring licensees to take all prescribed steps to secure compliance with quality standards;
- (e) ensuring that the electricity fittings installed and used by persons to whom electricity is to be supplied are safe; and
- (f) promoting the efficient use of electricity.

Contents of supply rules and by-laws

38. Rules and by-laws made for purposes specified in section 36 may -

- (a) prohibit transmission or supply in specified circumstances;
- (b) require notification of accidents, failures of supply and/or transmission or distribution facilities;
- (c) require plans, maps etc. to be kept and made available for inspection and copying;

-
- (d) relieve the classes of licensed operators specified in the regulations from obligations to supply electricity in specified circumstances;
 - (e) require compliance with notices served by the Authority which -
 - (i) are intended to prevent or end a breach of regulations made under this Act; or
 - (ii) eliminate or reduce risk of personal injury or property damage or interference with property;
 - (f) provide for deemed compliance with technical standards and requirements;
 - (g) provide for exemptions from the requirements of regulations made under section 48;
 - (h) restrict or require the use of certain products, substances or processes or forbid unapproved substances, products and processes;
 - (i) require substances, products and processes to comply with standards or other requirements established by the regulations;
 - (j) provide for certain persons or organisations to give approval required by the regulations and for such approval to be subject to conditions or modification and revocation;
 - (k) require the provision of information to prescribed persons;
 - (l) forbid the use or installation of fittings which have not been approved;
 - (m) impose requirements as to installation, arrangement, connection, testing, disconnection, alteration and repair;
 - (n) impose requirements regarding earthing of electrical installations, electrical voltage and frequency;
 - (o) enable the Authority to authorise any departures from the regulations as may be required and to make those departures subject to conditions; and
 - (p) provide for the installation and certification of meters.

Streetworks and access rules and by-laws

39. (1) Rules made pursuant to section 36 may be made for the following further purposes, namely to enable a licensed transmission operator, a licensed distribution operator or any other licensed operator to the extent that its licence so provides to -

- (a) carry out streetworks; and
- (b) enter into or onto premises belonging to, or occupied by, any person for the purposes of carrying out streetworks.

(2) For the purposes of this section, such regulations shall be binding on such persons, to such an extent and in such manner as may be set out in such regulations.

Contents of streetworks Rules and by-laws

40. Without prejudice to the generality of section 39, rules made under section 39 may require a licensed transmission operator, a licensed distribution operator and any other licensed operator to the extent that its licence so provides to -

- (a) take prescribed steps prior to carrying out streetworks;
- (b) take prescribed steps prior to entering into or onto premises not belonging to the licensed operator;
- (c) ensure the safety of all persons during the carrying out of streetworks;
- (d) ensure the reinstatement of all land or building following the completion of streetworks and where required by any persons having an interest in land or building the subject of streetworks, repair any damage;
- (e) ensure a proper and accurate record is maintained of all streetworks carried out;
- (f) take prescribed steps for the carrying out of emergency streetworks; and
- (g) ensure streetworks are carried out with the minimum of interference with production facilities belonging to other licensed operators or

the owners or operators of telecommunication equipment or facilities, and all adjacent landowners or users.

PART IV

REGULATED ACTIVITIES

Regulated activities

41. The following activities shall be regulated activities -

- (a) the generation of electricity;
- (b) the transmission of electricity;
- (c) the distribution of electricity; or
- (d) the supply of electricity to premises.

Offence to engage in regulated activity unless licensed or exempt

42. No person shall conduct a regulated activity unless -

- (a) he is authorised to conduct that regulated activity by a licence granted by the Authority under this Act; or
- (b) he is exempted under this Act from the requirement to be so authorised.

Sale of production capacity

43. Except to the extent that the Authority may, in the by-laws and after consultation with the Minister and licensed operators, specify that persons participating in electricity generation in Lesotho shall not sell -

- (a) production capacity; or
- (b) electricity output,

to any person other than an authorised electricity supplier.

Self supply of electricity

44. No by-laws shall be made in relation to this section for the purpose of exempting from the requirements, persons whose production capacity is used solely for the self-supply of electricity.

Introduction of by-pass sales

45. (1) Without prejudice to the provisions of section 45 at any time following satisfaction of subsections (2) and (3), the Minister may by order and after not less than six months' consultation with all licensed operators and the Authority, permit the sale of electricity by providers of production capacity to eligible customers (but not a licensed transmission operator or a licensed distribution operator) to the extent and subject to the terms specified in such order.
- (2) The Authority shall prepare a report stating that the electricity markets in Lesotho are sufficiently stable for it to be in the public interest; and that the sale of electricity by providers of production capacity directly to eligible customers be permitted to the extent specified in the report.
- (3) The report shall include what needs to be amended in this Act and the licences issued under it before introducing the by-pass sales.
- (4) By-pass sales shall be introduced after ten years from the commencement of this Act unless the Authority and the Minister certify otherwise.
- (5) The certification made by the Minister pursuant to subsection (4) shall be valid for a period of one year.

Industry consultation

46. The Minister shall consult with all licensed operators as to the method and timing of the introduction of by-pass sales.

Conditions for introduction of by-pass sales

47. An order made pursuant to section 45 shall -
- (a) not apply except to the extent that the Authority has in a report under section 45 stated that it is in the public interest to do so; and

- (b) have no effect prior to the making of such fair and reasonable modifications to this Act and any licences issued pursuant to this Act as may have been recommended by the Authority in its report.

Power to grant licence exemptions

48. (1) The Authority may, after consultation with all stakeholders or a body representing the stakeholders, by order, issue an exemption to a person conducting a regulated activity from the requirement to be authorised to do so by licence.

(2) The exemption issued in accordance with subsection (1) may be made following an application for the issue of an exemption by any person or at the instigation of the Authority.

Exemptions

49. (1) If a person makes an application to the Authority for the issue of an exemption from the requirement to be authorised by a licence, the Authority may, after consultation with the stakeholders issue or refuse to issue the exemption, wholly or to such extent as may be specified in the exemption.

(2) The exemption referred to in subsection (1) may have conditions.

(3) An application for an exemption shall be made in writing and the applicant shall provide the Authority with such information as the Authority may consider necessary for the purposes of determining whether to issue or refuse to issue an exemption.

(5) Where the applicant fails to comply with the conditions of the exemption, the Authority may direct that the licence exemption be revoked;

(6) Before issuing an exemption, the Authority shall give notice that it proposes to issue an exemption.

(7) The notice issued in terms of subsection (4) shall state the reasons for issuing the exemption and specify a period (being not less than 28 days) within which representations or objections may be made in respect of the proposed exemption.

(8) The Authority shall consider any such representations or objections.

(9) A notice made pursuant to sub-section (4) shall be in such form as the Authority may think fit for the purposes of bringing its attention to those persons likely to be affected by the issuing of an exemption.

PART V

LICENSING

Application and issue of a licence

50. The Authority may, upon an application made by any person and in accordance with any overall Government policy guidance embodied in legislation, issue to the person a licence authorising the person to conduct a regulated activity, as defined under section 41.

Form of application

51. An application for a licence made under section 50 shall -
- (a) be in such manner as the Authority may prescribe;
 - (b) be accompanied by a fee prescribed by the Authority; and
 - (c) be published in such manner as the Authority may think fit.

Notice of proposal to issue licence

52. (1) Before the issue of a licence, the Authority shall give notice -
- (a) stating that it proposes to issue the licence;
 - (b) stating the reasons why it proposes to issue the licence; and
 - (c) specifying a period (being not less than 28 days) within which representations or objections may be made in respect of the proposed issue.
- (2) The Authority shall consider representations or objections made pursuant to subsection (1).

Form of notice

53. A notice made under section 52 shall be in such form as the Authority may think fit for the purpose of bringing its attention to those persons likely to be affected by the issue of a licence.

Base criteria

54. The Authority shall not issue a licence referred to in section 50 unless it is satisfied that the prospective licensee has an appropriate financial standing, technical and managerial competence.

Licence to be written specify term etc.

55. A licence for a regulated activity shall -
- (a) be in writing; and
 - (b) unless previously revoked or surrendered in accordance with its terms, continue in force for the period specified in the licence and such licence shall not be capable of being surrendered without the consent of the Authority.

Other licences etc.

56. A licence obtained from the Authority to conduct a regulated activity shall not operate to relieve a person issued with it from any obligation to obtain any other licence, consent, permission or waiver that may be required from persons other than the Authority for purposes connected with the conduct of its business and vice versa.

Conditions of licences

57. (1) A licence issued under section 50 may include conditions which appear requisite to the Authority, including conditions requiring payment to the Authority of a fee on the issue of a licence or during the term of a licence, or both, of amounts determined under the licence.
- (2) Conditions referred to in subsection (1) may -
- (a) require the licensed operator to enter into agreement with any person for the purposes specified in the licence condition; and

- (b) include provision for determining the terms on which such agreements are to be entered into.

Control of transfer assignment of licences

58. (1) No licensee may transfer, assign or sell a licence granted to it under this Act or cede control in the operations of the licence or merge with another person or licensee without the prior approval in writing of the Authority.
- (2) The Authority shall not unreasonably withhold the approval sought for purposes of subsection (1).

Refusal

59. The Authority may -
- (a) refuse a cession, sale or assignation of a licence or a merger or take over of a licence holder in accordance with rules concerning the approval of transfer or assignment of licences; or
 - (b) revoke a licence for non-compliance with, or violation of, this Act.

Review of agreements entered into by service providers

60. (1) An agreement between a licence holder and any other person shall be submitted to the Authority for approval and the Authority may review agreements entered into by licensees to ensure compliance with this Act except that the Authority may exempt certain persons or classes from this provision.
- (2) A licence holder who fails to -
- (b) disclose the existence of an agreement; and
 - (c) submit an agreement, which may affect competition or the objectives of this Act,
- commits an offence and is liable on conviction to a fine not exceeding five thousand maluti or to imprisonment for a period not exceeding one year.

(3) If the Authority does not respond to a submitted agreement within 90 days of the date of submission of the agreement, the Authority shall be deemed to have given its approval to the terms of such agreement.

Conditions of generation licences

61. Without prejudice to the generality of section 50, a licence issued to any person authorising the conduct of an electricity generation business shall include conditions -

- (a) restricting the share of the total market for such regulated activity in which the licensed operator or its affiliates and related undertakings may be engaged or interested;
- (b) requiring the electricity generation business to submit its production facilities to central despatch by a licensed transmission operator;
- (c) restricting the authorisation conferred by the licence to specified production facilities or to a specified production capacity therefore;
- (d) requiring the electricity generation business to offer terms for the provision of ancillary services;
- (e) requiring the electricity generation business to maintain and operate safe, efficient and economical electricity generation facilities in accordance with the contract which it may enter into with Lesotho Electricity Corporation or other bodies; or
- (f) requiring the electricity generation business to comply with any transmission code and any distribution code insofar as any of them are applicable to it.

Conditions of transmission and despatch licences

62. Without prejudice to the generality of section 52 a licence issued to any person authorising the conduct of a transmission and despatch business shall include conditions -

- (a) requiring the licensed transmission operator to engage in the economic purchase of goods and services;

- (b) prohibiting the licensed transmission operator from engaging in designated activities other than the business of a transmission or despatch operator;
- (c) prescribing how the licensed transmission operator shall perform the functions assigned to it in this Act;
- (d) requiring the maintenance of separate accounts in respect of distinct parts of the licensed transmission operator undertaking and prohibiting cross subsidy between those parts;
- (e) providing for the calculation of tariffs;
- (f) requiring the licensed transmission operator to implement and maintain a billing and settlements system; and
- (g) requiring the licensed transmission operator to offer terms for connection to, and use of, the licensee's transmission system.

Conditions of distribution and supply licences

63. (1) Without prejudice to the provisions of section 50, a licence authorising the conduct of a distribution and supply business shall include conditions -
- (a) requiring the licensed distribution operator to engage in the economic purchase of electricity and other goods and services;
 - (b) prohibiting the licensed distribution operator from engaging in designated activities other than the distribution and supply of electricity;
 - (c) relating to the establishment of tariffs which the licensed distribution operator may charge consumers of electricity and the calculation of tariffs;
 - (d) requiring the licensed distribution operator to maintain separate accounts in respect of distinct parts of its business and prohibiting cross subsidy between those parts;
 - (e) requiring the licensed distribution operator to offer terms to persons requiring a supply of electricity;

(f) requiring the licensed distribution operator to publish codes of practice in relation to the payment of bills by consumers, the disconnection of consumers, the provision of services to the elderly and disabled, the efficient use of electricity by consumers and the handling of complaints; and

(g) requiring the preparation and maintenance of a distribution code.

(2) Notwithstanding subsection (1), the Minister shall have the power to compel the separation of a distribution and supply business, and award a separate supply licence to a non-distributor.

Self-modifying provisions

64. Conditions included in a licence may provide for the conditions to cease to have effect or to be modified at such times, in such manner and in such circumstances as may be specified or determined under the conditions.

Power to modify licences

65. The Authority may modify the conditions of a particular licence.

Notice of proposal to modify

66. (1) Where the Authority proposes to modify the conditions of a licence, it shall give notice -

(a) stating that it proposes to make the modification and setting out its effect;

(b) stating the reasons why it proposes to make the modification ; and

(c) specifying the period, which shall not be less than 28 days, within which representations or objections in respect of the proposed modification may be made.

(2) The Authority shall consider any representations or objections made.

Form of notice and notice recipient

67. A notice under section 66 shall be published in such manner as the Authority thinks fit and be sent to the licensed operator and the Government.

Modification only by agreement or following arbitration

68. The Authority shall not make any modification unless -

- (a) the licensed operator agrees to the modification; or
- (b) if the licensed operator does not agree to the modification pursuant to subsection (1), arbitrators to whom the matter is referred by the Authority pursuant to section 88 determined that the modification be made.

Time for effectiveness of agreed modification

69. Where a modification is made under paragraph (a) of section 68 the licence condition as modified shall have effect from such time as the Authority directs (being not less than 42 days from the date of the notice under section 67).

Time for effectiveness of arbitrated modifications

70. Where modification is made under subsection (b) of section 68 the licence condition as modified shall have effect from such time as is determined by the arbitrators.

Publication of modifications

71. Following modification of a licence condition, the Authority shall publish the modification in such manner as it thinks fit.

Criteria for arbitrator

72. (1) Arbitrators to whom a licence modification is referred to under paragraph (b) of section 68 shall determine -

- (a) whether or not the relevant modification should be made to the relevant licence; and
- (b) if it should, when the modification shall come into effect, and in doing so, the arbitrators shall make their determination by applying the following criteria -
 - (i) the duties of the Authority under this Act; and
 - (ii) the extent to which the Authority has acted in accordance with its powers specified in this Act.

(2) In the event that the arbitrator determines that the relevant modification shall not be made, they shall not be entitled to substitute any other modification for that proposed by the Authority but may make non-binding recommendations to the Authority as to the modification they consider to be appropriate.

Duty to enforce licences by final order

73. Subject to section 74, where the Authority is satisfied that a licensed operator is contravening or is likely to contravene a condition of its licence, the Authority shall as soon as practicable by a final order make such provision as appears to the Authority to be requisite so as to secure compliance with that condition.

Power to make preliminary order

74. Subject to section 78, where it appears to the Authority that -

(a) a licensed operator is contravening, or is likely to contravene any condition of its licence; and

(b) it is requisite that a preliminary order be made,

the Authority shall, by a preliminary order, make such provision as appear to it to be requisite so as to ensure compliance with that condition.

Criteria for preliminary order

75. In determining whether it is requisite that a preliminary order be made, the Authority shall take all relevant considerations into account, in particular, the likelihood and extent of any loss or damage, which any person is likely to sustain as a result of any contravention of the relevant licence condition.

Confirmation of order as a final order

76. Having made a preliminary order, the Authority shall confirm it, with modifications if these appear to be expedient or necessary, as a final order, or if the licensed operator is contravening or is likely to contravene any licence condition and the provisions of the order are requisite to secure compliance with that licence condition.

No order to be made

77. The Authority shall not make or confirm a preliminary order, or make a final order if -

- (a) it may be inconsistent with the Authority's general duties in this Act;
- (b) the licensed operator is taking all such steps as appear to the Authority to be appropriate to secure or facilitate compliance with the licence condition or conditions, or
- (c) the contravention of the licence condition is, in the opinion of the Authority, of a trivial nature.

Notice following investigation

78. Where the criteria in section 87 are fulfilled, the Authority shall -

- (a) serve a notice on the licensed operator to that effect; and
- (b) take reasonable steps, including publishing a notice in an appropriate manner, to bring the terms of the notice to the attention of persons likely to be affected by it.

Terms of orders

79. (1) A preliminary order or final order -

- (a) shall require the licensed operator to do or not to do the things specified in the order; or
 - (b) shall take effect at, and remain in force for, the time specified in the order; and
 - (c) may include a requirement on the licence holder to pay such amount as the Authority may determine to be appropriate.
- (2) An amount imposed in terms of paragraph (c) shall be deemed not to be a tax-deductible expense nor an allowable cost for the purposes of establishing the charges to be made by the licensee.

Revocation of orders

80. The Authority may revoke a preliminary or final order at any time after it is issued.

Enforcement procedure

81. (1) The Authority shall, before confirming a preliminary order or making a final order, give notice to the relevant licensed operator stating -

- (a) that the Authority proposes to confirm or make an order;
- (b) the effect of the order;
- (c) the licence condition in respect of which the order is being made or confirmed;
- (d) the acts and any omissions which in the opinion of the Authority constitute contravention of the relevant licence conditions;
- (e) any other relevant and material facts; and
- (f) the period which shall not be less than 28 days or such shorter period as the Authority may determine, where the acts or omissions referred to in paragraph (d) endanger life or limb.

(2) During the period referred to in paragraph (f), the licensed operator may make representations or objections in respect of the order to be made by the Authority.

Consideration of representations

82. Any representation or objection made by the licensed operator under sections 85 and 86 shall be duly considered by the Authority.

Publication

83. In confirming or making an order, the Authority shall publish the order in an appropriate manner so as to bring its purpose to the attention of persons likely to be affected by it and serve a copy of the order on the relevant licensed operator.

Modification of Preliminary or Final Orders

84. The Authority shall not modify any preliminary order or final order made other than -

- (a) with the agreement of the licensed operator; or
- (b) having served on the licensed operator a notice confirming the modifications and allowing the licensed operator a period of at least 28 days to make representations thereon to the Authority and having then properly considered any representations which are made to the Authority by or on behalf of the licensed operator.

Confirmation of Preliminary or Final Orders

85. In making or confirming a preliminary order or making a final order or revoking a preliminary order or final order, the Authority shall -

- (a) serve a copy of the order or revocation notice, as the case may be, on the licensed operator; and
- (b) publish the order or revocation notice, as the case may be, in an appropriate manner so as to bring its purpose to the attention of persons likely to be affected by it.

Validity and effect of Preliminary and Final Orders

86. (1) Preliminary and final orders shall be valid and effective upon being made by the Authority.

(2) A licensed operator shall comply with preliminary or final orders as soon as they become effective.

Requests for Reconsideration of Final Order

87. (1) A party to a proceeding which has resulted in a final order may file a request that the Authority reconsiders its final decision in that proceeding.

(2) The request made pursuant to subsection (1) shall be -

- (a) served on all parties to the proceeding;
- (b) filed within 30 days of the Authority's decision.

- (3) Oppositions to requests for reconsideration shall be -
 - (a) filed within 10 days after the reconsideration is filed;
 - (b) be served upon the petitioner and all other parties to the proceeding;
 - (c) strictly limited to matters raised in the request for reconsideration.
- (4) The Authority shall not consider matters outside those raised in the request for reconsideration.
- (5) The petitioner may file a reply to any opposition within 7 days of the oppositions.
- (6) The replies made pursuant to subsection (5) shall strictly be limited to matters raised in the oppositions, and shall be served on all parties to the proceeding.
- (7) Matters other than those raised in the request for consideration shall not be considered by the Authority.
- (8) The Authority shall, within 3 months, deny the entire request, or grant or deny the request in part.
- (9) The Authority shall issue an order containing a concise statement for the reasons for the action taken.

Requests for Clarification of Final Order

- 88. (1) Any party to a proceeding which has resulted in a final order may file a request that the Authority clarify its final decision in that proceeding, in respect of any matter which remains unclear or confusing with respect to such decision.
- (2) The request filed in accordance with subsection (1) shall be -
 - (a) filed within 1 month of the Authority's decision, and
 - (b) served upon the petitioner and all parties to the proceeding.
- (3) requests referred to in subsection (1) shall be strictly limited to matters raised in the request for clarification, and the Authority shall not consider matters other than those raised in the request for clarification.

- (4) The petitioner may file a reply to any opposition within 7 days of the filing of the requests, and such replies -
 - (a) shall strictly be limited to matters raised in the requests; and
 - (b) be served on all parties to the proceeding.
- (5) Matters other than those raised in the request for clarification shall not be considered by the Authority.
- (6) The Authority shall, within 3 months -
 - (a) deny the entire request;
 - (b) grant the request in whole or in part.
- (7) The Authority shall issue an order containing a concise statement for the reasons for the action taken.

Referral of Orders to Arbitration

89. (1) Where a licensed operator affected by a preliminary order or final order made or confirmed believes that -
 - (a) the order was not made in accordance with the procedure specified in the terms of this section; or
 - (b) the order was not within the powers of the Authority,

the licensed operator may refer the matter to arbitration in accordance with this section. Any reference made to the arbitrators under this section shall not affect the licensed operator's obligation to comply with the terms of the order, pending the outcome of the reference.
- (2) Except as provided for in paragraphs (a) and (b) of subsection (1), the validity of a preliminary order or final order shall not be questioned by the licensed operator by any legal proceedings unless the issue has been referred to and determined by arbitration in accordance with this Act.
- (3) On receiving a reference made pursuant to subsection (1), the arbitrators may reject or accept the said referral. If they accept they may -
 - (a) quash the relevant order or any parts thereof; or

- (b) where the order imposes a monetary penalty, substitute a monetary penalty of a lower amount as the arbitrators consider to be appropriate in the circumstances of the case.

Determination by arbitration

90. A dispute arising between a person conducting a regulated activity and the Authority as to any decision made by the Authority shall be determined by arbitration in accordance with schedule 2:

provided that such a dispute would have initially been dealt with in accordance to section 89.

Publicly enforceable duty to comply

91. (1) Parties to the order have a duty to comply with a final order.
- (2) Breach of duty referred to in subsection (1) shall be actionable by any person who may be affected by contravention of the order.

Licensee's defence to proceedings

92. In any proceedings brought against the licensed operator under section 90, it shall be a defence for the licensed operator to prove that it took all reasonable steps to avoid contravention of the relevant order and any proceedings brought under section 90 shall not be affected by any reference to arbitration pursuant to section 89.

Orders enforceable by court

93. A preliminary order or final order shall be considered an enforcement document, as defined in the applicable laws in Lesotho and compliance with any preliminary order or final order shall be enforceable by civil proceedings in the court with jurisdiction brought by the Authority.

Powers of the Authority to require information

94. (1) Where it appears to the Authority that a licensed operator may be contravening or may have contravened this Act or a licence condition, the Authority may for the purposes of the exercise of its functions under this Act by notice -
- (a) require any person to produce, at any time and place required in the notice, to the Authority, any documents which are

specified or described in the notice and in that person's possession or control; or

(b) require any person to furnish to the Authority any information as may be specified in the notice, and specify the time and manner in which such information is to be provided.

(2) Where a person is in default in complying with a notice, the Authority may seek such order of the court as the court may make for the purpose of ensuring compliance.

(3) The costs of an order sought pursuant to subsection (2) shall be borne by the person in default.

Transfer of Licence

95. A licence may not be transferred unless it contains a provision permitting transfer, which provision may require conditions to be complied with before the licence may be transferred.

No transfer without consent

96. A licensed operator shall not, without the prior written consent of the Authority, transfer or agree to transfer, or create, or agree to create, any security over any relevant asset and liability or create or agree to create, or extinguish or agree to extinguish, any interest in relevant assets and liabilities.

No release of liabilities on transfer

97. Where the relevant assets and liabilities of the licensed operator are in the form of liabilities, the licensed operator shall be prohibited from entering into any agreement under which such liabilities are discharged, released or transferred to another person without the prior consent of the Authority.

Void transactions

98. Any transaction entered into in contravention of section 95, 96 or 97 shall be void.

PART VI
OFFENCES

Types of Offences

99. (1) Without prejudice to any other stricter punishment in the Act, a person who -
- (a) contravenes a provision of this Act;
 - (b) alters, destroys or otherwise suppresses a document or information required of him under this Act; or
 - (c) conducts any activity alone or with others, the effect of which, in the reasonable opinion of the Authority, is intended to have or likely have the effect of restricting, distorting or otherwise preventing competition in connection with the conduct of any regulated activity or being prejudicial to the interests of the consumers of electricity and in any such case the conduct of that activity is contrary to the public interest,
- commits an offence and is liable on conviction to a fine not exceeding 10% of their annual revenue or to imprisonment for a period not exceeding 10 years.

Actions

100. An action under this part shall be commenced against the relevant company.

Service offences

101. A person who -
- (a) interferes with any electrical plant used for or in connection with the generation, transmission, or distribution of electricity or does or causes to be done anything that is calculated to interfere with or damages any such plant;
 - (b) uses an electricity service requiring a licence, knowing it to be unlicensed;

- (c) provides, without being licenced, electricity services requiring a licence;
- (d) damages electricity facilities and assets belonging to another person; or
- (e) contravenes any provision of this Act where a penalty has not been provided,

commits an offence and is liable on conviction to a fine not exceeding 10% of their annual revenue for each separate offence, or to a period of imprisonment not exceeding 10 years or both.

Inquiries and investigations

102. The Authority may -

- (a) on its own motion or on application by interested persons, conduct inquiries and investigations with respect to any activity prohibited or permitted to be done under this Act; and
- (b) appoint inspectors for the purposes of this Act.

Enforcement Orders

103. (1) If it appears to the Authority that a contravention of this Act has occurred, the Authority may issue an enforcement order providing the subject of the order to comply with the order or agree with the Authority within 30 days of the date of issue on a course to remedy the contravention.

(2) A person who fails to comply with any order issued by the Authority commits an offence and is liable on conviction to fine not exceeding 10% of their annual revenue or to imprisonment for a period not exceeding 10 years or both.

Powers of enforcement

104. (1) The Authority shall have the powers to enforce the provisions of this Act.

(2) Notwithstanding subsection (1), nothing in this Act shall oust the jurisdiction of the civil courts.

Disputes

105. (1) The Authority shall adjudicate disputes and complaints arising between licenced operators, or between licenced operators and consumers.

(2) All parties involved in disputes before the Authority shall, within 14 days of privately settling their dispute, inform, in writing, the Authority of the terms of the settlement in cases where a dispute is settled privately.

PART VII

IMPORT AND EXPORT OF ELECTRICITY

Lesotho Electricity Corporation

106. Notwithstanding the provisions of section 107, Lesotho Electricity Corporation or its successor company is entitled to -

- (a) continue importing electricity from Eskom, pursuant to any agreements, between Lesotho Electricity Corporation and Eskom, that are in force on the commencement of this Act; and
- (b) import and export electricity, without a licence, subject to conditions laid down by the Southern Africa Power Pool.

Licensing Requirements

107. (1) No person shall import or export electricity without a licence issued by the Authority.

(2) A person who wishes to import or export electricity shall apply, in writing, to the Authority.

(3) The Authority shall, before issuing, the licence referred to in subsection (1), consult the Minister on the matter.

(4) The Minister may, where the national security may be jeopardised, direct the Authority not to issue a licence to import or export electricity.

PART VIII**TRANSMISSION****Transmission duties**

108. A transmission licensee and any other licensed transmission operator shall -

- (a) develop, maintain and operate safe, efficient and economical electricity transmission systems;
- (b) comply with any reasonable request to connect to such transmission systems the following :
 - (i) facilities for electricity generation; and
 - (ii) systems for electricity distribution and supply, if the request is technically and economically feasible and the applicant is willing to pay the costs of such a connection; and
- (c) subject to the approval of the Authority and having regard to representations made by stakeholders or a body representing the stakeholders, develop, maintain, review and modify -
 - (i) a transmission code for the transmission of electricity;
 - (ii) procedures for the economic and technical despatch of production facilities;
 - (iii) a system for the settlement of payments due to and from the providers of production capacity, delivered electricity output and ancillary services; and
 - (iv) a customer service dispute mechanism;
- (d) charge licensed distribution operators in respect of connection to and use of its national transmission systems a cost-reflective tariff; and
- (e) tariffs charged pursuant to paragraph (d) shall be calculated in the manner prescribed by the Authority in the

licence granted to the transmission licensee or other licensed transmission operator.

Non-discrimination

109. The transmission licensee or any other licensed transmission operator shall not unduly create a preference in favour of, or unduly discriminate against, any person or class of persons in the connection of the following-
- (a) electricity generation facilities; or
 - (b) systems for electricity distribution and supply; or
 - (c) terms on which it undertakes the transmission of electricity in such systems.

PART IX

DISTRIBUTION

General duties of distribution companies

110. (1) Every distribution company and any other licensed distribution operator shall -
- (a) develop, maintain and operate safe, efficient and economical electricity distribution systems;
 - (b) offer to enter into an agreement with relevant persons for connection to its distribution system, use of such system and provide a supply of electricity, if such an offer is technically and economically feasible;
 - (c) develop, maintain, review and modify -
 - (i) distribution codes for the distribution of electricity;
 - (ii) procedures for the economical and efficient distribution and supply of electricity; and
 - (iii) a customer service dispute mechanism; and
 - (d) charge licensed suppliers in respect of connection to and use of its distribution systems, a cost reflective tariff.

(2) The tariff charged in accordance with paragraph (1) (d) shall be calculated in the manner prescribed by the Authority in the licence granted to the distribution licensee or other licensed distribution operator.

Non-discrimination

111. A licensed distribution operator shall not unduly create a preference in favour of, or unduly discriminate against, any person or class of persons in the following -

- (a) connection to its distribution systems;
- (b) connection to its system of any consumers of electricity;
- (c) provision of the use of its distribution systems; or
- (d) terms on which it undertakes the supply of electricity.

Regulations

112. The Minister may make regulations for carrying the provisions of this Act into effect.

SCHEDULE 1

(Section 17)

CONSTITUTION OF THE LESOTHO ELECTRICITY AUTHORITY

1. The Board of the Authority shall be comprised of such Members as appointed in accordance with this Act, (of whom one shall also be the Chairman).
2. The Authority may delegate any of its functions to the Chairman or to any other Board Member or to any committee it may establish.
3. The Board shall, by a separate decision, establish and regulate its own management and procedure.

SCHEDULE 2**(Section 90)****LESOTHO ELECTRICITY AUTHORITY ARBITRATION CODE****Disputes to be settled by Arbitration**

1. This Schedule shall apply to any dispute referred to arbitration pursuant to Section 89.

Commencement of Arbitration, Appointment of Arbitrator etc.*Notice of Arbitration*

2. A person wishing to refer a regulatory dispute to arbitration under Section 89 shall serve a written notice of arbitration on the Chairman in his capacity as such and shall serve a copy of the notice of arbitration on the other party to the dispute. In either case, the notice shall summarise the basis of the claim.

Appointment

3. Subject to the agreement of the parties to a dispute, there shall be appointed three arbitrators, two of whom shall be appointed by each of the Chairman and the person conducting the regulated activity (in each case within twenty one days of the notice referred to in sub item (2)). The third arbitrator shall be appointed by the two arbitrators appointed by the parties to the regulatory dispute within forty-two days of the notice referred to in sub item (1) (4). In the event that the third arbitrator is not appointed within the period specified, such arbitrator shall be appointed by the Chief Justice.

Change of Arbitrator

4.
 - (1) Where any arbitrator acting or appointed to act under these rules resigns, withdraws, dies or refuses to act, the Chairman shall, upon application by a party to the dispute, on proof satisfactory to the Chairman, declare the office of arbitrator vacant.
 - (2) Where any arbitrator or any party to the arbitration considers that any arbitrator is unable by reason of mental or physical infirmity to perform the duties of his office or is disqualified for any reason from performing the duties of his office, or has delayed unreasonably in the conduct of the arbitration or in the making of

any award, the Chairman may, at the request of the arbitrators or any party to the dispute, having heard the arbitrator and the parties if they or any of them wish to be heard, declare the office of that arbitrator vacant.

- (3) Where the office of an arbitrator is declared vacant, a replacement arbitrator shall be appointed by the party who originally appointed that arbitrator.

Procedure

General

5. (1) The arbitrators shall conduct the arbitration in such manner as they consider most suitable for the fair resolution of the dispute. In reaching their decision, the arbitrators shall have due consideration to what is fair and reasonable in the circumstances and the duties of the Authority in this Act.
- (2) The parties may agree that an arbitration shall be conducted on the basis of written representations only, in such a case, nothing shall prevent the arbitrators from requiring one or more oral hearings if they consider it appropriate for the just and expeditious determination of the proceedings. The arbitrators shall have the power at any time to make or amend the procedure to be followed by the parties in the arbitration. Unless the arbitrators rule otherwise, the following timetable and procedure shall apply:
 - (a) within 14 days of the notice of appointment of the last of the arbitrators, the claimant shall serve on the arbitrators and the other party a written statement of its claim. The statement of claim shall specify all relevant facts and matters and contentions of law on which the claimant relies or admits or denies and the relief and remedies sought;
 - (b) within 14 days of service by the claimant of the statement of its claim, the other party shall serve on the arbitrators and the claimant a written statement of its defence. The statement of defence shall specify the defence and all relevant facts and matters and contentions of Act if any, naming the principal authorities on which the respondent relies or admits or denies. The statement of defence may set out any counterclaim which the respondent wishes to make;

- (c) the statements served pursuant to sub item (a) and (b) shall be accompanied by copies of any documents referred to in them or upon which the party serving the statement wishes to rely. That party shall, if so requested, make the originals of such documents available for inspection by the arbitrators or the other party;
- (d) after service by the respondent of its statement of defence, the arbitrators may allow the parties a period within which to adjust the written pleadings so that each material averment of the parties is answered whether by admission, denial, explanation or otherwise and thereafter the claimant shall reproduce the pleadings, as adjusted, into a single document and send two copies to each of the arbitrators and the other party;
- (e) the arbitrators may permit the parties a short extension to exchange final pleadings;
- (f) within 14 days after the pleadings have been so finalised, each party shall serve upon the arbitrators and the other party signed statements of any factual witnesses upon whose evidence it wishes to rely, together with any copies of documents referred to in them not already in the possession of the other party. That party shall, if requested to do so, make the originals of such documents available for inspection by the arbitrators or the other party;
- (g) if they consider it appropriate for the just and expeditious determination of the proceedings, the arbitrators shall be entitled to appoint one or more advisers or experts on any matter including matters of Act to report to him on any issue. The costs of any such person shall be subject to the provisions of item 6 of the Schedule. Where the arbitrators receive a report from any such person, they shall disclose the report to the parties and afford them the opportunity to comment on it as they consider appropriate; and
- (h) within 7 days after the pleadings have been finalised, the arbitrators shall agree with the parties a hearing date and the estimated length of the hearing. The hearing date shall be no later than 28 days after the finalisation of the pleadings.

Production of Documents

6. (1) In relation to the production of documents -

- (a) the arbitrators may, on the application of a party, require the production of such specific identified documents as are within the possession, custody or control of the other party or any third party which the arbitrators consider relevant; the parties to the proceedings shall be given the opportunity to inspect and to comment upon any document so produced;
- (b) if any document is not supplied to the arbitrators and the other party within such time as the arbitrators shall prescribe, the arbitrators may -
 - (i) proceed with the arbitration on the basis of the documents already before them;
 - (ii) apply to the court for an order to produce the documents; or
 - (iii) strike out the part of the claim or defence to which the document relates.

(2) In making their award, the arbitrators shall be entitled to make such allowance as they may think fit for the failure to supply the document.

(3) No party is obliged to produce any document which is privileged from production in any proceedings in an action in the courts.

(4) An application by a party to the arbitrators pursuant to paragraph (a) of such items shall be made not later than 21 days before the date fixed for the hearing.

(5) A party in receipt of a request from the arbitrators to produce a document shall comply with such a request within 7 days.

(6) At least 51 days before the hearing, each party shall serve on the other and on the arbitrators its written submissions.

Hearing

7. At the hearing -

- (a) there shall be no oral opening submissions but the arbitrators may ask the parties questions arising out of their written submissions or pleadings;

- (b) subject to sub-item (e)(iv), the testimony of a witness may be presented in written form, as a signed statement;
- (c) any party may apply to the arbitrators for an order that any witness whose written statement or affidavit is to be relied upon by a party should attend for oral examination at a hearing;
- (d) the arbitrators shall not make such order unless, having heard the parties, they are satisfied that the oral examination is not likely to assist them in making their award;
- (e) if a witness is ordered to attend and fails to do so, the arbitrators may -
 - (i) place such weight on the written statement or affidavit as they think fit;
 - (ii) exclude it altogether;
 - (iii) apply to the court for an order for the citation or attendance of witnesses; or
 - (iv) there shall be no examination-in-chief of factual or expert witnesses who give oral evidence. The parties may cross-examine witnesses on oath or affirmation to the extent permitted by the arbitrators;
- (f) the parties may make oral closing submissions, not exceeding 20 minutes each;
- (g) the parties may be legally represented;
- (h) the arbitrators shall be entitled to receive such evidence as they shall consider relevant, whether or not such evidence would have been admissible in a court of law; and
- (i) the arbitrators shall deliver to the parties a reasoned award within 14 days of the end of the hearing.

Proposed Amendments

8. (1) Immediately after their appointment, the arbitrators shall require each party to inform them of any amendments to the procedure or the time limits set out in item 4 of the schedule which they consider appropriate. Each party shall promptly send any proposed amendments to the arbitrators and the other party. Before responding, the arbitrators may require the parties to meet them.
- (2) (a) The arbitrators shall have power to strike out part or all of any claim or defence made in the proceedings on any one or more of the following grounds -
 - (i) wilful breach of these rules;
 - (ii) deliberate non-compliance by a party with any order of the arbitrators; or
 - (iii) inordinate or inexcusable delay on the part of any party, where such act or omission has, in the opinion of the arbitrators given rise to a substantial risk that a fair determination of the dispute will not be possible, or which is such as to cause or to have caused serious prejudice to the other party.
- (3) The arbitrators shall have power to strike out part or all of any claim or defence made in the proceedings if they are satisfied that the claim or defence or any part of it is scandalous, frivolous or vexatious.
- (4) If either party fails to serve a pleading within the period allowed under these code or by order of the arbitrators, and fails to remedy his default within 14 days after despatch to him by the arbitrators or any other party to the dispute of notice of that default, the arbitrators shall be entitled to rule that he shall be treated as having abandoned his claim or defence, as the case may be and, having made such a ruling, the arbitrators shall be entitled to proceed with the reference on an *ex parte* basis.
- (5) Any party who becomes aware that any provision or requirement of this schedule has not been complied with and who fails to state an objection to that failure within 30 days shall be deemed to have waived the right to object.

Awards

9. (1) Awards shall be issued by total agreement or majority vote and any disagreement by any of the arbitrators must be attached to the award.
- (2) Without prejudice to the provisions of any agreement between the parties to the dispute, awards of the arbitrators shall be final and binding on the parties and will be subject to no further appeal, judicial or otherwise.
- (3) In addition to their other powers under these rules, the arbitrators may make such orders in their award as they consider necessary to resolve the dispute, including orders that -
 - (a) the licensee shall pay money to the Authority, whether that amount is specified in the arbitrator's order or calculated in accordance with such procedure as they shall specify;
 - (b) one party shall take or not take specified action;
 - (c) the meaning of a licence or a party's obligations under that licence are as stated in the award; or
 - (d) any principal sum they may order one party to pay to another shall carry interest at such rate and over such period as they shall determine, and the interest rate shall be in accordance with the Laws of the State.
- (4) The arbitrators shall send a copy of their award to each of the parties to the dispute and the Chairman, and the award shall include a summary of the dispute and documents exchanged.

Awards as to costs

10. Whether or not the arbitration reaches the stage of a final award, the arbitrators may order (by way of interim award) any party to pay some or a specified proportion of any party's costs incurred in the arbitration, the arbitrators' fees and any costs of their appointment.

Secrecy

11. (1) Unless otherwise agreed between the parties or authorised by the arbitrators, all documents produced or disclosed in the course of an arbitration, including any award, shall be treated as confidential by the arbitrators, the Relevant Authority, and each of the parties to the dispute.

(2) The parties shall require those persons under their responsibility to maintain, during the arbitration process and thereafter, the confidentiality of the arbitration procedures disclosed to them.

(3) Unless otherwise agreed by all parties or permitted by the arbitrators such documents shall only be used -

(a) for the purposes of the arbitration; or

(b) for enforcing the arbitration award.

(4) Arbitration awards must be kept confidential, a copy of every award of the arbitrators pursuant to this Schedule may only be disclosed to the parties, the Relevant Authority and the court for enforcement purposes.

(5) The Relevant Authority shall be entitled to direct that an award or any part of it shall be kept confidential, to the extent stated and subject to such conditions, if any, as shall be specified in the direction, and may hear representations from the parties in relation to this matter.

(6) Whatever is required by the courts relating to arbitration shall be exempt from the rules relating to confidentiality.

Communications

12. Communications for the purposes of the arbitration shall be in writing and any telephone communications shall be confirmed in writing wherever possible. Unless the contrary is proved, faxes sent before [17.00] hours, Lesotho time, shall be deemed received on the day of sending and letters sent by express post shall be deemed received two working days after posting.

Liability

13. Neither the Relevant Authority nor any arbitrator shall be liable to any party for any act or omission, including negligence in connection with any arbitration under this schedule unless the act or omission is established to have been in bad faith.

Jurisdiction

14. Arbitrations shall take place in the city of Maseru or such other place that may be determined by the Chairman.

Service of Notices and Arbitration processes

15. (1) Unless otherwise provided, any notice required by any provision of this Arbitration Code to be served on any person, may be served either-
- (a) by delivering it to the person on whom it is to be served;
 - (b) by leaving it at the usual or last known place of residence of that person;
 - (c) by sending it by registered post to that person at his usual or last known place of residence in Lesotho; or
 - (d) in any other manner authorised by the Chairman.
- (2) The Relevant Authority may, on good cause shown, extend any period of time by or under this code whether such period has expired or not.

2002

THE PARLIAMENT OF LESOTHO

LESOTHO ELECTRICITY AUTHORITY ACT 2002

STATEMENT OF OBJECTS AND REASONS

(Circulated by the Authority of the Minister responsible for Natural Resources, Hon. Monyane Moleleki)

1. The main purpose of the Lesotho Electricity Authority Bill is to establish the Lesotho Electricity Authority as an independent and autonomous regulatory body, charged with the regulation of the electricity sector. Provision is also made for the restructuring and development of the electricity sector in Lesotho.
2. The regulatory authority shall be responsible for the regulation of the electricity sector. The Bill provides that regulated activities in the sector are the generation, transmission and distribution of electricity. The regulation of the sector will involve, inter alia -
 - (a) licensing and supervision of regulated activities in the electricity sector in Lesotho;
 - (b) management of use of the electricity grid;
 - (c) approval and inspection of equipment used by service providers;
 - (d) review and setting of tariffs, rates and charges; and
 - (e) universal access.
3. Currently, electricity services are licensed and regulated in accordance with the Electricity Act of 1969 and the Electricity Regulations of 1970. Under this Bill, the electricity operators in Lesotho will be licensed and regulated by the Lesotho Electricity Authority as market conditions and public interest may warrant.
- (4) The Bill also creates and establishes the Lesotho Electricity Authority Board. The Board is to have no less than four part time members and a full time Chairman. The Board shall perform and exercise all powers and duties of the Authority.

- (5) In granting the licences, the regulatory authority will have to pay particular regard to fairness, transparency, universal service, and accountability to the general public.
- (6) The Bill also introduces competition in a regulated environment so as to enhance development, quality of service, and universal access in the electricity sector.

