

[CAP. 433

REPUBLIC OF ZAMBIA

THE ELECTRICITY ACT

CHAPTER 433 OF THE LAWS OF ZAMBIA

THE ELECTRICITY ACT

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Electricity

CHAPTER 433

*Act No. 15
of 1995*

ELECTRICITY

Date of Assent: 21st April 1995

An Act to regulate the generation, transmission, distribution and supply of electricity; and to provide for matters connected with or incidental to the foregoing.

[28th April, 1995

Enactment ENACTED by the Parliament of Zambia.

PART I

PRELIMINARY

- Short title 1. This Act may be cited as the Electricity Act,
- Interpretation 2. In this Act, unless the context otherwise requires
- Cap. 436 "Board" means the Energy Regulation Board established by the Energy Regulation Act;
- "contract of supply" means a contract between the operator of an undertaking and any other person for the supply of electricity to that person;
- "consumer" means a person to whom electricity is supplied under a contract of supply;
- "generating station" means any station for generating electricity including any building, plant and machinery used for the purpose and all accessories necessarily incidental thereto, together with the site thereof, and any site intended to be used for such a station;
- "land" includes any land under whatever tenure held and any easement, servitude, right or privilege in or over land or water;
- Cap. 281 "local authority" means a council established under the Local Government Act;
- "owner"
- (a) in relation to State Land, means the President, Minister or other authority who is authorised to deal with matters relating to State Land;
- (b) in relation to land other than State Land, includes
- (i) the person known to be representative in Zambia of the owner of the land;

- (ii) the liquidator or receiver of a company that owns land; and
- (iii) the representative recognised by law of any owner who has died or become bankrupt, is an assignee of an estate, or is a minor or of unsound mind or otherwise under a disability;

"rated generating capacity", in relation to installed generating plant, means the designed maximum continuous output of the plant;

"State Land" has the meaning assigned to it in the Lands Act; Cap. 184

"street" means any road or highway or any part of a road or highway, whether or not it has been at any time declared or rendered such by some competent authority, and includes bridges over which a street passes and any drift in the line of a street and all approaches, cuttings, embankments, subways, culverts, sluits, drains, dams, kerbs, fences, parapets, guards, grid-iron tracks, and other work or thing forming part of, or connected with, or belonging to, such street, and includes any sanitary lane or private street;

"transmission line" means any cable or overhead line for the transmission or reticulation of electricity from one undertaking to another or from an undertaking to a consumer, together with any transformers, switchgear and other works necessary to, and used in connection with, such cable or overhead line, and the buildings such part thereof as may be required to accommodate such transformers, switchgear and other works;

"undertaking" means any undertaking for the generation, transmission, distribution or supply of electricity, and includes such an undertaking that generates, transmits, distributes or supplies electricity solely or mainly in the interests of a group of associated companies for the purpose of the businesses of those companies, whether or not any excess electricity is supplied to any other consumer who is not part of the group.

PART II

ELECTRICITY GENERATION, TRANSMISSION, DISTRIBUTION AND SUPPLY

3. (1) Subject to subsection (2) and the Energy Regulation Act, no person shall establish or carry on any undertaking unless in accordance with this Act and the Energy Regulation Act. With certain exceptions, Undertaking to comply with law

(2) Subsection (1) shall not apply to an undertaking the plant of which is rated at the site where it is installed at a capacity of less than one hundred kilowatts and which is used solely for the generation, Cap. 436

transmission, distribution or supply of electricity for an operator's own use.

Establishment of undertakings

4. (1) Any person who wishes to erect and establish any generating station works

- (a) the plant of which will be rated at the site where it is to be installed at a capacity of hundred or more kilowatts, for generating, transmitting, transforming, converting or distributing electricity; or
- (b) the plant of which is rated at the site where it is installed at a capacity of less than one hundred kilowatts and which is used for the generation, transmission, distribution or supply of electricity for the use of any other person, whether or not it is for an operator's own use;

shall do so in accordance with regulations made under this Act, and shall comply with any requirement of the Minister or the Board for the purpose of facilitating co-ordination with existing or future undertakings.

(2) The Minister may, by statutory instrument, declare any transmission line to be a common carrier for the purposes of this Act.

(3) A transmission line that is declared, under subsection (2), to be a common carrier may, subject to any regulations made under this Act and any requirements made by the Minister or the Board under subsection (1), be used for the purposes of an undertaking on such terms and conditions as may be agreed between the operator of the undertaking and the owner or person in control of the line concerned or, in default of such agreement, as may be determined by the Board with the consent of the Minister.

Increase or decrease of rated generating capacity

5. (1) If any undertaking wishes to increase or decrease its rated generating capacity, or its contractual rights to purchase power from outside Zambia, it shall apply to the Minister for approval and shall submit to the Minister a full report on its proposals.

(2) The Minister shall, in considering any application under this section, have regard to the terms of any relevant international agreement.

(3) The Minister may, after considering a "report submitted under this section, approve or refuse the application; and the decision by the Minister shall be final, subject only to a right of appeal to the High Court on a point of law.

Duties of operator of undertaking as

6. (1) Subject to the terms and conditions of a licence issued in accordance with the Energy Regulation Act, every operator of an undertaking shall supply electricity to every consumer who is in a

position to make satisfactory arrangements for payment under a contract of supply with that operator. to supply
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(2) Where an operator of an undertaking unduly delays or refuses to supply any applicant with electricity, the consumer may appeal to the Board, which shall determine the conditions under which the operator shall undertake such supply.

(3) A person who is supplied with electricity from an operator of an undertaking shall not be entitled to a standby supply of electricity from the operator in respect of any premises unless that person has agreed to pay, and has given security to pay, such minimum annual sum as will give to the operator a reasonable return on any capital expenditure and any other standing charges which may be incurred in meeting the maximum demand for the premises.

7. Subject to section eight, the charges made by an operator of an undertaking that supplies electricity to the public shall be determined in accordance with the licence governing the undertaking. Charges for
supply

8. (1) Subject to other provisions of this section, an operator of an undertaking that supplies electricity to the public may, with due regard to any or all of the following circumstances: Variations and
alterations of
charges

- (a) the amount of electricity consumed;
- (b) the uniformity or regularity of demand;
- (c) the time when or during which the electricity is required;
- (d) the expenditure of the operator of the undertaking in furnishing supply;
- (e) any other circumstances approved by the Board;

vary prices in respect of the supply of electricity to a particular consumer either above or below the charges specified in the licence governing the undertaking and may, from time to time, alter the charges so varied.

(2) If an operator considers it expedient to vary or alter charges in respect of any supply of electricity, the operator shall give notice to the consumer of the proposal to vary or alter those charges, as the case may be.

(3) If the consumer does not make any application under subsection (4) within thirty days of the date of notice referred to in subsection (2), the variation or alteration, as the case may be, shall, unless the operator of the undertaking and the consumer otherwise agree, come into effect thirty days after the date of that notice or from such later date as the operator may in that notice fix.

(4) The Board shall, on an application by a consumer, review a proposal referred to in subsection (2), taking into consideration any submissions made by the consumer.

(5) Any application made under subsection (4), together with any objection of the operator to that application, shall be submitted to the Board.

(6) Any consumer who makes an application under subsection (4), or the operator of any undertaking who objects to such an application, may, either by themselves or by their legal practitioner, appear before the Board and lead evidence in support of the application or objection, as the case may be.

(7) After considering the application referred to in subsection (4) and any objection thereto, the Board may

(a) confirm the proposed variation or alteration, as the case may be, to which the application relates;

(b) order that the proposed variation or alteration, as the case may be, to which the application relates shall not be made;

or

(c) order the operator of the undertaking to make such other variation or alteration, as the case may be, as the Board considers fit.

Contract of supply must be carried out

9. Except for causes beyond the control of the operator of an undertaking, and subject to any regulations made under this Act, no operator shall lessen or discontinue the supply of electricity stipulated in any contract of supply unless

(a) the consumer has failed to pay charges lawfully due in terms of the conditions of supply or the agreement, as the case may be; or

(b) the consumer has failed to comply with conditions of supply or the regulations and failed to remedy the default within seven days of receiving, by registered post from the operator of the undertaking, a notice calling upon the consumer to do so.

Failure to carry out contract of supply

10. (1) If any operator of an undertaking willfully or without reasonable cause lessens or discontinues the supply of electricity stipulated in any contract of supply, or if a person operates an undertaking in such a manner as is, in the opinion of the Board, detrimental to the public interest, the Board may, after affording the operator an opportunity to be heard on the matter, suspend the licence and authorise any person appointed by the Board to enter upon the undertaking and forthwith to take all such action as that person may consider necessary for the maintenance and continuation of the supply of electricity from the undertaking.

(2) The person appointed under subsection (1) shall operate the undertaking for, and on account of, and at the risk and expense of, the operator thereof, and shall, after deducting such amount, in payment of the reasonable costs and expenses of operating the

undertaking, as the Board may approve, render the balance of the net revenue derived from the undertaking to such operator.

(3) Any entry made under this section shall not prejudice or affect the security of any debenture holder or mortgage or the right of enforcing such security.

(4) Where the Board takes action under subsection (1), the Board shall not remove the suspension of the licence until the Board is satisfied that the causes for which the licence was suspended have been removed.

(5) Notwithstanding the foregoing provisions of this section, if the estate of the operator of an undertaking has been the subject of a receiving order made under any law relating to bankruptcy, the undertaking shall not, save with the consent of the receiver or trustee, as the case may be, be operated for a period longer than ninety days and the taking over of control of the undertaking under the provisions of the section shall not deprive such receiver or trustee of the right to dispose of the undertaking for the benefit of the creditors.

11. (1) Where the operator of an undertaking fails to remove the causes for which the licence authorising the undertaking was suspended within ninety days of the suspension, the operator shall be deemed to be in default for the purposes of section fifteen of the Energy Regulation Act, and the Board may, after affording the operator an opportunity to be heard on the matter either directly or through a legal practitioner, revoke the licence in accordance with the provisions of this Act.

Revocation of licences

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(2) In the event of a licence being revoked under this section, the Board may authorise any person appointed by the Board to enter upon the undertaking of the person concerned and operate it in accordance with the provisions of this Act, but no such entry shall prejudice or affect the security of any debenture holder or mortgage or the right of enforcing such security.

12. Any person who operates an undertaking the plant of which is rated at the site where it is installed at a capacity of one hundred or more kilowatts shall submit to the Minister and the Board details of the plant and installation of the undertaking in such manner and form as may be prescribed, and any such undertaking shall be maintained in accordance with regulations made under this Act, and shall comply with any requirement of the Minister or the Board for the purpose of facilitating co-ordination with existing or future undertakings.

Maintenance of undertakings

13. (1) A licence under the Energy Regulation Act authorising any person to supply electricity within the area under the jurisdiction of a local authority shall not be issued without the consent of that local authority.

Supply within area of local authority Cap. 436

(2) Any person who considers that the consent of the local authority has been unreasonably withheld may appeal to the Board who shall, after hearing the parties, make such decision as it may consider fair and reasonable.

PART III

ACQUISITION OF LAND AND RIGHTS OVER LAND

Acquisition of
land for
electricity
purposes

14. (1) The President may, by order, authorise the acquisition by compulsion of so much land, including State Land, as the President may consider necessary for any purpose associated with the generation, transmission, distribution or supply of electricity by an operator of any undertaking and any acquisition in terms of this section shall be completed in accordance with such directions as the President may give in that or any other order.

(2) Before making an order under subsection (1), the President shall be satisfied that

- (a) the operator concerned has taken all reasonable steps to acquire the land intended to be used on reasonable terms by agreement with the owner of the land and has been unable to do so; and
- (b) the acquisition of such land is necessary for the purposes of the undertaking carried on by the operator concerned.

(3) The President may, under such conditions as the President may consider necessary, including conditions requiring the reimbursement of compensation paid under subsection (4), permit the use by the operator of any undertaking of any land which the President has acquired under subsection (1):

Provided that

- (a) the land shall not be used by that operator for any purpose other than the purpose for which it was acquired under subsection (1); and
- (b) the land or such part of it as the President may determine shall revert to the use and absolute control of the President if it or any part of it is used for any purpose for which it was acquired under subsection (1).

(4) Adequate compensation shall, from moneys appropriated for the purpose by Parliament, be paid to any person who suffers loss or damage through the exercise of the powers conferred by this section in accordance with the provisions of the Lands Acquisition Act.

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(5) An application for an order under this section shall be made in the manner prescribed, and a copy of each application shall be served

on the owner of the land and on any person lawfully occupying it if such owner or person is, at the time of the application, resident within Zambia.

(6) If the owner of, or any person lawfully occupying, any land to be acquired under this section is temporarily absent from Zambia at the time when an order is made, any person authorised by the President so to act may enter upon, take possession of, and use, such land, leaving all questions as to the compensation to be paid for such land to be settled afterwards in accordance with subsection (4).

(7) Where any rights over land have been acquired by the operator of an undertaking, whether by agreement or under this Part, then, notwithstanding the fact that those rights may not have been registered against the title to the land to which they relate in accordance with the written law relating to registration of title, those rights shall be binding on the owner of such land and on the successor in title or representative in interest.

15. (1) Notwithstanding section fourteen, the operator of an undertaking may, subject to the provisions of this section, place transmission line, whether above or below ground, into, out of, or across, any land including State Land, other than land covered by buildings.

Wayleaves
over land

(2) Before placing any line in position in accordance with subsection (1), the operator shall serve on the owner of the land and any person lawfully occupying it or, in the case of a street, on the local or other authority concerned, notice of the intention to erect a line, together with a description of the lines proposed to be placed:

Provided that if the owner or such person is not resident or has no representative within Zambia, no such notice need be served.

(3) If, within twenty-eight days after the service of a notice under subsection (2), the person to whom such notice has been given objects, or attaches to the consent any terms or conditions to which the operator of the undertaking objects, the operator may refer the matter to the Minister for decision, and the Minister may make such order as may be necessary:

Provided that any question as to an amount of compensation shall, with any necessary modifications, be decided in accordance with subsection (4) of section fourteen.

(4) Nothing contained in this section shall authorise or empower the operator of an undertaking to lay down or place any transmission line into, through, or against any building, or in any land above which a building is erected, without the consent of the owner and lawful occupier thereof:

Provided that any overhead line and any support, stay or strut required for the sole purpose of supporting an overhead line may be placed on or above any land or building with the consent of the Minister if, in the minister' opinion, the consent of the owner or person lawfully occupying the land, as the case may be, is being unreasonably withheld, and the Minister shall fix the amount of compensation or of annual rental, or of both, which shall be paid to such owner or such person by the operator.

(5) If the owner of, or person lawfully occupying, any land on or over which any transmission line has been placed, or in the case of a street, the local or other authority concerned, requires the position of such line to be changed, the Minister may, by notice in writing, order the operator to alter the position of such line, subject to such conditions as failing agreement between the parties, may be specified by the Minister.

Rights of
entry

16. (1) When, in accordance with the provisions of this Part, the operator of an undertaking has been permitted to use any land or has placed a transmission or distribution line in position, the operator shall be entitled to reasonable access to such land or line for the purpose of carrying on the operations authorised by his licence on such land or maintaining, removing, repairing or replacing such line.

(2) When the operator of any undertaking has acquired any land or rights over land under the provisions of any law relating to power or light, the provisions of subsection (1) shall apply, with necessary modifications, to access to such land, and any person entitled to exercise them, subject to the conditions applicable to them under the provisions of the law at the time when they were required.

Trees and
buildings
interfering
with
transmission
lines

17. (1) Where on any land, including State Land, trees or undergrowth obstruct or interfere with the construction, working or maintenance of any transmission line, the operator concerned may give to the owner or lawful occupier of the land upon which such trees or undergrowth are situated not less than fourteen days' notice of intention to enter upon the land and cut down or trim the trees or undergrowth in question and, after expiry of such notice, may enter upon land and carry out such intention:

Provided that, after receiving notice in terms of this subsection, the owner or lawful occupier upon whom it was served may, at his own expense and at any time before the expiry of the notice, cut down or trim the trees or undergrowth in question to the extent indicated by the operator.

(2) Notwithstanding subsection (1), if immediate action is imperative to protect any transmission line from damage by any trees or undergrowth on any land, including State Land, the operator concerned may, without any notice to the owner or lawful occupier, enter

upon such land and cause such trees or undergrowth to be cut down or trimmed in such manner as may be necessary to prevent the damage.

18. (1) Except with the permission of the operator of the undertaking who has control of the transmission line in question, no person shall erect any building or structure in such a position or manner as to be likely to interfere with the supply of electricity through any transmission line.

Obstruction of lines by buildings, etc.

(2) If, after a transmission line has been constructed, any person erects any building or structure in such a position or in such a manner as to be likely to interfere with the supply of electricity through the transmission line in question, the operator of the undertaking who controls such transmission line may request the person concerned to remove or adjust the building or structure as may be necessary, and the person concerned fails to comply with the request, the operator may apply to the Minister for an order for the removal or adjustment of the building or structure and, after due inquiry, the Minister may make such order as may be necessary.

19. (1) Where a person who operates an undertaking has acquired the right to place or replace a transmission line across, under, or along any street or has so placed a transmission line in accordance with this Act or any law relating to power and light, that person may break up any street in respect of which such rights have been acquired and may, from time to time, repair, alter, or remove any such lines.

Breaking up of streets

(2) Before exercising any power conferred by this section, the operator of an undertaking shall give to the local authority or other authority concerned such notice, in writing, as it may require, not exceeding twenty-eight days, of the operator's intention to do so, except in cases of emergency, when the operator shall give notice thereof to that authority as soon as possible after the emergency has arisen, and shall likewise give notice to the owner of water pipes, telephone cables, or other installations likely to be affected by the exercise of such power.

(3) Except in cases of emergency, the powers conferred by this section shall be exercised under the superintendency of the local or other authority concerned and according to such specifications and such plan showing the route approved by that authority or, if any difference arises respecting the specification, plan or route, then as may be approved by the Minister:

Provided that, if the authority concerned fails to exercise the powers of superintendency herein conferred after such notice has been given, the operator may exercise those powers without such superintendency.

(4) Whenever the operator of any undertaking carries out any work authorised under this section, the operator shall comply with the by-laws and regulations of the local or other authority concerned, and shall complete that work with reasonable despatch, and shall reinstate and make good the street opened or broken up and remove the rubbish occasioned thereby, and shall, while the street is opened or broken up or obstructed, cause the works to be all times fenced and guarded and to be lit during the night.

(5) If the operator of an undertaking fails to carry out any duty imposed by subsection (4), the local or other authority concerned may cause any work delayed or omitted to be executed at the expense of the operator.

(6) The operator of an undertaking shall pay to the local or other authority concerned costs reasonably and necessarily incurred by it in exercising any necessary superintendency under this section, or in reinstating and making good any street opened or broken up by the operator.

Compensation for
damage in the
exercise of
powers

20. In the exercise of powers in relation to the execution of works given under this Act, an operator of an undertaking shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all local and other authorities and other persons who have sustained damage, for all damage sustained by them by reason or consequence of the exercise of such powers and, in default of agreement between the parties, the amount and application of such compensation shall be determined by Arbitration in accordance with the provisions of the Arbitration Act and for that purpose the parties shall be deemed to be parties to a submission in which the reference is to two arbitrators.

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PART IV

OFFENCES AND PENALTIES

Interference
with supplies
and apparatus

21. (1) Any person who, without legal right, abstracts or causes to be abstracted, or diverts or causes to be diverted, any electric current, or consumes or uses any such current, knowing the same to have been wrongfully or unlawfully abstracted or diverted, shall be guilty of an offence.

(2) Any person who, without legal right, cuts, injures or interferes with any apparatus for generating, transmitting or distributing or supplying electricity, or maliciously extinguishes or damages any lamp or other electric apparatus provided for the convenience of the public, shall be guilty of an offence.

False
information

22. Any person who, in giving information, making any application or claim, or giving any notice for the purpose of any provision

of this Act, makes any statement that the person knows to be false in a material particular, shall be guilty of an offence.

23. Any person who carries on an undertaking in contravention of this Act, or any person who fails to carry out any order or decision of the President, the Minister or the Board under this Act shall be guilty of an offence.

Contraventions of Act

24. Any person who is guilty of an offence under this Act shall be liable in respect of each offence to a fine not exceeding one hundred thousand penalty units, or to imprisonment for a period not exceeding five years, or to both.

Penalties

PART V

GENERA L

25. The Minister, the Board or any person authorised in writing by the Minister or the Board may, at all reasonable times, enter the premises of any undertaking for the purpose of ascertaining whether the provisions of this Act or the conditions of any licence are being complied with.

Entry and inspection

26. The operator of an undertaking and any person authorised in writing by the operator may at all reasonable times enter any premises to which electricity is or has been supplied by the operator in order to inspect transmission lines, fittings, meters, and apparatus and for the purpose of ascertaining the quantity of electricity consumed or, where a supply is no longer required or such operator is authorised to cut off the supply from such premises, for the purpose of removing any transmission lines, fittings, meters, and apparatus belonging to such operator and any damage caused by such entry, inspection, or removal shall be repaired and made good by the operator.

Operator's powers of entry and inspection

27. The Minister or the Board may, for purposes of this Act, require the operator of an undertaking to provide information relating to the activities and operations of the undertaking, including such records, documents and agreements relating to the purchase and sale of electricity as the Minister or the Board may require.

Information and records

28. (1) The operator of an undertaking shall send to the Board notice of any accident of such a kind as to have caused, or to have been likely to have caused, loss of life or serious personal injury which has occurred in any part of such operator's works or transmission lines, together with notice of any loss of life or serious personal injury occasioned by any such accident and any such operator who fails to send such notice as soon as possible after the occurrence of the accident has become known to him shall be guilty of an offence.

Notice of accidents

(2) Nothing contained in subsection (1) shall absolve the operator of an undertaking from the need to comply with the provisions of any other written law relating to the reporting of accidents.

Serving of
notice

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

Regulations

- 30.** (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.
- (2) Without derogating from the generality of subsection (1), regulations may provide for the following matters:
- (a) the maintenance of security of supply of electricity within Zambia;
 - (b) the standards with which buildings, machinery, transmission lines, and other works of whatever description, which are required to generate or supply electricity -must comply;
 - (c) the construction, installation, quality, alteration, operation, control, protection and inspection and testing of works, plant, machinery, apparatus, appliances, and equipment for or incidental to the generation, transmission, distribution, connection, installation and use of electricity, whether on the premises of the operator of an undertaking or a consumer;

(d) securing the safety of the public from personal injury or damage to property arising from the generation, supply, or use of electricity;

(e) prescribing anything to be prescribed under this Act.

(3) Regulations made under this Act may provide that persons offending against the regulations shall be liable to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

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