

# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

**Vol. 558**

**Pretoria, 8 December 2011**  
**Desember**

**No. 34825**

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**GENERAL NOTICE**

**Energy, Department of**

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## GOVERNMENT NOTICE

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### DEPARTMENT OF ENERGY

No. 890

8 December 2011

#### **National Energy Regulator Amendment Bill**

The Department of Energy (the Department) intends to submit the National Energy Regulator Amendment Bill to Parliament. You are hereby requested to submit your comments on this Bill to the Department no later than 20 January 2012. Your written comments may be submitted to the Director General for attention of Matthews Bantsijang or Maduna Ngobeni as follows:

**By hand:**

Director General  
Attention: Matthews Bantsijang/ Maduna Ngobeni  
Travenna Campus  
70 Meintjies Street  
Sunnyside  
0001

Or

**By post:**

Director General  
Attention: Matthews Bantsijang/ Maduna Ngobeni  
Private Bag X19  
Arcardia  
0007

Or

**By Email:**

[epar@energy.gov.za](mailto:epar@energy.gov.za)

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

## NATIONAL ENERGY REGULATOR ACT 40 OF 2004

### ACT

To establish a single regulator to regulate the electricity, piped-gas and petroleum pipeline industries; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

### CHAPTER I

#### DEFINITIONS AND OBJECT

##### 1. Definitions

In this Act, unless the context indicates otherwise -

["administrative action" bears the meaning ascribed to it in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);] ["Appeal Board" means the Energy Appeal Board established by section 14B(1);

"Chairperson" means the chairperson of the Appeal Board appointed in terms of section 14B(2);

"Commissioner" means the person appointed as the Commissioner of the Energy Regulator in terms of section 5A(1); ]

["chief executive officer" means the chief executive officer contemplated in section 5;] "Constitution" means the Constitution of the Republic of South Africa, 1996;

"Department" means the Department of [ Minerals and] Energy;

"Deputy Commissioners" means the persons appointed as Deputy Commissioners of the Energy Regulator in terms of section 5B(1);

**“Electricity Act”** means the Electricity Act, 1987 (Act No. 41 of 1987);

**“Electricity Regulation Act”** means that Electricity Regulation Act, 2006 (Act No. 4 of 2006);

**“Energy Regulator”** means the National Energy Regulator established by section 3;

**“family member”** means a parent, child or spouse of a person, and includes a partner living with that person as if they were married to each other;

**“Gas Act”** means the Gas Act, 2001 (Act No. 48 of 2001);

**“Gas Regulator Levies Act”** means the Gas Regulator Levies Act, 2002 (Act No. 75 of 2002);

**“Minister”** means the Minister of [Minerals and]Energy;

**“Petroleum Pipelines Act”** means the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003);

**“prescribe”** means prescribe by regulation;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“underlying statutes”** means the Electricity Regulation Act, the Gas Act and the Petroleum Pipelines Act.

## 2. **Object of Act**

The object of this Act is to establish a National Energy Regulator for the regulation of the electricity, piped-gas and petroleum pipelines industries.

## CHAPTER II

### NATIONAL ENERGY REGULATOR

#### 3. **Establishment of Energy Regulator**

- (1) The National Energy Regulator is hereby established as a juristic person.
- (2) The Energy Regulator consists of the Commissioner and the Deputy Commissioners appointed by the Minister in terms of this Act.

#### 4. **Functions of Energy Regulator**

- (1) The Energy Regulator must -

- (a) undertake the functions of the Gas Regulator as set out in **section 4 of ]the Gas Act;**
  - (b) undertake the functions of the **[Petroleum Pipelines Regulatory]Authority** as set out in **[section 4 of]the Petroleum Pipelines Act;** and
  - (c) undertake the functions of the Regulator as set out in **[section 4 of]the Electricity Regulation Act[ 2006].**
- (2) The Energy Regulator must exercise the powers and perform the duties conferred and imposed upon it by this Act, the underlying statutes and any other law.

**[5. Composition of Energy Regulator**

- (1) **The Energy Regulator consist of four full-time and five part-time members appointed by the Minister.**
- (2) **The Minister must designate one of the part-time members as chairperson of the Energy Regulator and another part-time member as deputy chairperson.**
- (3) **The Minister must designate one of the full-time members as the Chief Executive Officer of the Energy Regulator.**
- (4) **The Minister must designate one of the other three full-time members to be primarily responsible for electricity regulation, another for piped-gas regulation and another for petroleum pipeline regulation.**
- (5) **If the chairperson is for any reason unable to perform his or her functions, the deputy chairperson must perform them until the Minister designates another chairperson.**
- (6)
  - (a) **A part-time member of the Energy Regulator holds office for a period of four years.**
  - (b) **A full-time member of the Energy Regulator holds office for a period of five years.**
  - (c) **The Minister may reappoint a member of the Energy Regulator.**
  - (d) **If a vacancy occurs on the Energy Regulator the Minister may fill the vacancy temporarily for a period of not more than 12 months by appointing a person without complying with section 6(7).**
- (7) **Members of the Energy Regulator must be paid for their services such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.]**

**5A. Appointment of Commissioner**

- (1) Subject to section 6(1), the Minister must appoint a person with suitable qualifications and experience relevant to the electricity, piped-gas or petroleum pipelines industries to be Commissioner for a term of five years.
- (2) Before appointing the Commissioner, the Minister must by notice in the Gazette call for nominations from members of the public.
- (3) The Minister may reappoint a person as Commissioner at the expiry of that person's term, provided that a Commissioner may not serve more than two consecutive terms of office.
- (4) The Commissioner is responsible for the general administration of the Energy Regulator and for carrying out its functions, and must:
  - (a) perform the functions that are conferred on the Commissioner by or in terms of this Act;
  - (b) manage and direct the activities of the Energy Regulator;
  - (c) supervise the Deputy Commissioners and the Energy Regulator's staff.
- (5) The Commissioner may appoint a Deputy Commissioner as Acting Commissioner to perform the functions of the Commissioner in his or her temporary absence.
- (6) The Commissioner serves in a full-time capacity to the exclusion of any other remunerative employment, occupation or office.
- (7) The Minister must, in consultation with the Minister of Finance, determine the Commissioner's remuneration, allowances, benefits and other terms and conditions of employment.
- (8) The Commissioner, on one month's written notice addressed to the Minister, may resign as Commissioner.

**5B. Appointment of Deputy Commissioners**

- (1) Subject to section 6(1), the Minister must appoint:
  - (a) a person with suitable qualifications and experience relevant to the electricity industry to be the Deputy Commissioner in respect of electricity regulation;
  - (b) a person with suitable qualifications and experience relevant to the piped-gas industry to be the Deputy Commissioner in respect of piped-gas regulation; and

- (c) a person with suitable qualifications and experience relevant to the petroleum pipelines industry to be the Deputy Commissioner in respect of petroleum pipeline regulation.
- (2) The Deputy Commissioners shall be appointed for a period of five years.
- (3) The Deputy Commissioners shall be responsible for:
- (a) assisting the Commissioner in the performance of the Energy Regulator's functions;
- (b) making recommendations to, and advising the Commissioner on matters falling within their respective areas of responsibility;
- (c) performing any function assigned or delegated to him or her in terms of this Act.
- (4) The Commissioner may appoint a senior employee of the Energy Regulator as an Acting Deputy Commissioner to perform the functions of a Deputy Commissioner during the temporary absence of such Deputy Commissioner.
- (5) The provisions of sections 5A(2), 5A(3), 5A(6) to 5A(8), 6, 7, 9 and 10 apply, with the necessary changes, to the Deputy Commissioners.
6. **Disqualifications and requirements for the Commissioner [membership of Energy Regulator]**
- (1) No person may be appointed as or remain as the Commissioner [a **member of the Energy Regulator**]if that person -
- (a) is not a South African citizen or the holder of a permit as a permanent resident in the Republic;
- (aA) is not ordinarily resident in the Republic;
- (aB) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
- (b) is an unrehabilitated insolvent;
- (bA) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
- (c) has [ **within a period of 10 years immediately before the date of the proposed appointment,**]been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) took effect and [dishonesty or served a] sentenced to[ of] imprisonment without the option of a fine; or



- (d) has, **[after appointment]**, been convicted, whether in the Republic of elsewhere, of theft, fraud, forgery, perjury or any other [of an offence involving dishonesty[ or been sentenced to imprisonment without the option of a fine for any other offence].
- (2) **[The Minister must appoint, as members of the Energy Regulator, persons who -**
- (a) **collectively have adequate legal, technical, business, economic or other experience relevant to the electricity, piped-gas and petroleum pipelines industries;**
- (b) **are collectively broadly representative of South African society as a whole;**
- (c) **are committed and available to fulfil their role as members of the Energy Regulator; and**
- (d) **demonstrate impartiality and objectivity in such a manner that a fair balance between continuity and capacity building is achieved.]**
- (3) Upon appointment, the Commissioner must disclose to the Minister -
- (a) **[ every full-time member must terminate any employment or consulting relationship he or she has with any person, firm, association or company engaged in the electricity, piped-gas and petroleum pipelines industries and may not take up any such employment or consulting arrangement during his or her period of membership of the Energy Regulator;**
- (b) **every full-time and part-time member must disclose to the Minister and the Energy Regulator] his or her pecuniary interest in any person, firm, association or company engaged in the electricity, piped-gas and petroleum pipeline industries; and**
- (c) **[every full-time and part-time member must disclose to the Minister and the Energy Regulator-]\_if his or her family member [spouse, life partner or child]is in the employ of or acts as a consultant to, or has any relationship with, any person, firm, association or company engaged in the electricity, piped-gas and petroleum pipelines industries, or has any pecuniary interest in any such person, firm, association or company.**
- (4) **[A member may not at any time be present during the discussion of or the making of a decision on, or take part in, any matter before the Energy Regulator in which that member or his or her spouse, life partner, child or associate has a direct or indirect pecuniary interest.]**

- (5) If the Commissioner [a member]acquires an interest contemplated in subsection (3)(b), he or she [such member] must immediately in writing declare that fact to the Minister[and the Energy Regulator].
- (6) If a[the] family member [spouse, life partner or child] of the Commissioner [a member]acquires an interest contemplated in subsection (3)(c), he or she [such member]must immediately in writing declare that fact to the Minister[and the Energy Regulator].
- (7) [Before appointing members to the Energy Regulator, the Minister must by notice in the *Gazette* call for nominations from members of the public.
- (8) The notice published before the commencement of this Act calling for nominations for the first appointments to the Energy Regulator must be regarded as having been validly published in terms of subsection (7). ]
7. **[Vacation of office and termination of appointment of members of] Removal of the Commissioner [Energy Regulator]**
- (1) **The Minister must remove the Commissioner** [A part-time or full-time member of the Energy Regulator must vacate his or her office]if [that member] -
- (a) [becomes of unsound mind;
- (b) has been absent from more than two consecutive meetings without leave of the chairperson for each absence;
- (c) resigns by written notification to the Minister;]
- (d) materially fails to perform any duty imposed on him or her in terms of this Act or the underlying statutes[ the Electricity Regulation Act, 2006, the Gas Act or the Petroleum Pipelines Act]; or
- (e) becomes subject to any of the disqualifications [disqualified from being a member on any of the grounds ]referred to in section 6(1).
- (2) The Minister may remove the Commissioner from office [terminate the appointment of a member of the Energy Regulator]if he or she [such member] contravenes section 9.
8. **Committees [Meetings of Energy Regulator]**
- [(1) (a) The Energy Regulator must meet at such times and places as may be determined by the chairperson.
- (b) The chairperson must convene such meetings of the Energy Regulator as are necessary for the proper performance of its functions.

- (2) The chairperson must, upon a written request of the chief executive officer or two other members, convene a special meeting to be held within two weeks after the date of receipt of such request.**
- (3) If the chairperson is absent from a meeting of the Energy Regulator the deputy chairperson must chair the meeting.**
- (4) If both the chairperson and the deputy chairperson are absent from a meeting the chairperson must designate another part-time member to chair that meeting.**
- (5) Unless other procedures are prescribed by the Energy Regulator, the chairperson of any meeting of the Energy Regulator must determine the procedures to be followed at such meeting.**
- (6) The quorum for any meeting of the Energy Regulator is a majority of its serving members or four members, whichever is the greater.**
- (7) (a) A decision of the majority of the members present at a meeting constitutes a decision of the Energy Regulator.**  
**(b) In the event of an equality of votes on any matter the person chairing the meeting has a casting vote in addition to his or her deliberative vote.**
- (8) No decision taken by the Energy Regulator is invalid merely because of a vacancy on the Energy Regulator or because any person not entitled to sit as a member sat as such at the time when the decision was taken if the rest of the members present at the meeting and entitled to sit as members at the meeting constituted a quorum and the decision was taken by a majority of those members present and entitled to vote.**
- (9) (a) Any meeting of the Energy Regulator must be open to the public unless the quorate meeting passes a resolution to the effect that, for the part of the meeting concerned, the information to be discussed during that part of the meeting would create a record that would in turn oblige the Energy Regulator to refuse access to that information in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);**  
**(b) If the Energy Regulator takes a decision in any other manner than at a formal meeting, such decision comes into effect after it has been reduced to writing and signed by a majority of the members and it must be submitted for noting at the first formal meeting of the Energy Regulator following the decision.**  
**(c) The Energy Regulator must cause a record of all of its proceedings to be kept.](10) (a) The [Energy Regulator] Commissioner may**

establish one or more [sub]committees [of its members] to perform such functions of the Energy Regulator as the Commissioner [it] may determine, including conducting hearings and enquiries and making recommendations to the Commissioner or a Deputy Commissioner [and sitting as a tribunal].

(b) The Commissioner [Energy Regulator] must determine the composition of a [sub] committee, which may include persons other than the Commissioner, a Deputy Commissioner or an employee of the Energy Regulator who have specialist or technical knowledge that will assist the committee in its functions.

(c) The Commissioner [Energy Regulator] may at any time dissolve or reconstitute a [sub] committee.

(d) The Commissioner [Energy Regulator] must designate a member of a [sub] committee as chairperson of that [sub] committee.

**[(e) This Act applies, with the changes required by the context, to a subcommittee established in terms of this section.]**

(f) The Commissioner [Energy Regulator] is not absolved from the performance of any function entrusted to a [sub] committee.

**[(11) The Energy Regulator must make rules concerning the manner in which notice of meetings to be held and the business to be conducted thereat is brought to the attention of the public.]**

**9. Duties of the Commissioner [members of Energy Regulator]**

The Commissioner [Members of the Energy Regulator] must -

(a) act in a justifiable and transparent manner whenever the exercise of his or her [their] discretion is required;

(b) at all times act in the interests of the Energy Regulator and not in his or her [their] own [or sectoral] interests;

**(bA) act in a manner that does not undermine the integrity of the Energy Regulator;**

(c) act independently of any undue influence or instruction;

(d) not participate in any investigation, hearing, decision or other matter in respect of which the Commissioner, [recuse themselves from and refrain from voting on or discussing any matter, pending before the Energy Regulator in which] or his or her family member, [they] has [have] a direct or indirect pecuniary interest;

**(dA) not make private use of, or profit from, any confidential information obtained as a result of performing his or her functions as the Commissioner;**

(dB) not divulge any information referred to in paragraph (dA) to any third party, except as required as part of the Commissioner's functions;

- (e) act in a manner that is required and expected from the holder of a public office; and
- (f) act in the public interest.

**10. Decisions of [Energy Regulator] the Commissioner**

- (1) Every decision of the [Energy Regulator] Commissioner must be in writing and be -
  - (a) consistent with the Constitution and all applicable laws;
  - (b) in the public interest;
  - (c) within the powers of the Energy Regulator, as set out in this Act and the underlying statutes[the Electricity Act, the Gas Act and the Petroleum Pipelines Act];
  - (d) taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator;
  - (e) based on reasons, facts and evidence that must be summarised and recorded; and
  - (f) explained clearly as to its factual and legal basis and the reasons therefor.
- (2) Any decision of the [Energy Regulator] Commissioner and the reasons therefor must be available to the public except information that falls within a ground for refusal provided for in Chapter 4 of Part 2 [protected in terms] of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- [(3) Any person may institute proceedings in the High Court for the judicial review of an administrative action by the Energy Regulator in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).**
- (4) (a) **Any person affected by a decision of the Energy Regulator sitting as a tribunal may appeal to the High Court against such decision.**
- (b) **The procedure applicable to an appeal from a decision of a magistrate's court in a civil matter applies, with the changes required by the context, to an appeal contemplated in paragraph (a)]**

**11. Personnel of Energy Regulator**

- (1) The Commissioner may appoint staff, or contract with other persons, to assist in carrying out the Energy Regulator's functions. [Subject to the directions of the Energy Regulator, the chief executive officer is also responsible for -
- (a) **the day-to-day management of the affairs of the Energy Regulator;**
  - (b) **the appointment of other employees and contracting with persons to assist the Energy Regulator in the performance of its functions; and**
  - (c) **administrative control over the employees of the Energy Regulator.**
- (2) **The Energy Regulator must, on the recommendation of the Chief Executive Officer, from time to time determine the personnel and other resources to be made available to the full-time members contemplated in section 5(4).**
- (3) The employees of the Energy Regulator must be paid such remuneration, allowances, subsidies and other benefits as the Commissioner[Energy Regulator] may determine in accordance with the remuneration and benefits structure approved by [with the approval of]the Minister with the concurrence of [and] the Minister of Finance.
- (4) **[Despite subsection (1)(b), ] The Minister may, where he or she determines a need exists, instruct the Energy Regulator to make use of persons employed by or contracted to the Department or another licensing or regulatory authority falling under the Minister's jurisdiction.**
- (4A) An employee of, or person contracted to, the Energy Regulator may not participate in any investigation, hearing, decision or other matter of the Energy Regulator in respect of which that person or a family member of that person has a direct or indirect pecuniary interest.
- (5) Section 9 applies to every member of the personnel of the Energy Regulator, with the changes required by the context.

**12. Funds of Energy Regulator**

- (1) For the purpose of regulation of the piped-gas and petroleum pipelines industries, the funds of the Energy Regulator consist of -
- (a) money appropriated by Parliament;
  - (b) levies imposed by or under separate legislation;
  - (c) charges for dispute resolution and other services rendered in terms of this Act; and

- (d) licence fees.
- (2) For the purpose of regulation of the electricity industry, the funds of the Energy Regulator consist of -
  - (a) money appropriated by Parliament;
  - (b) funds collected under section 5B of the Electricity Act; and
  - (c) levies imposed by or under separate legislation.

### **13. Accounting by Energy Regulator**

- (1) The Energy Regulator must perform its functions in accordance with the Public Finance Management Act[1999 (Act No. 1 of 1999)].
- (1A) The Commissioner is the accounting officer for purposes of the Public Finance Management Act and is charged with the responsibilities of the accounting officer referred to in that Act.
- (2) The Energy Regulator must keep separate accounts for the electricity, piped-gas and petroleum pipelines regulatory functions.
- (3)
  - (a) The costs of the Energy Regulator must be shared between the electricity, piped-gas and petroleum pipeline regulatory functions in proportion to the costs incurred by the Energy Regulator in respect of each of those regulatory functions.
  - (b) Money appropriated by Parliament must be allocated to the separate accounts for the electricity, piped-gas and petroleum pipeline regulatory functions in proportion to the costs incurred by the Energy Regulator in respect of each of those functions unless Parliament determines otherwise.
  - (c) Money received by the Energy Regulator other than money appropriated by Parliament must be paid into the account that is kept in terms of subsection (2) for the industry from which such money was received, and must be used for the sole benefit of that industry.
- (4) The Energy Regulator must open one or more accounts in its name with one or more financial institutions and deposit therein all money received from the sources contemplated in section 12.
- (5) The financial records of the Energy Regulator must be audited by the Auditor-General.
- (6) The financial year of the Energy Regulator starts on 1 April of one year and ends on 31 March of the following year.

**14. Reporting by Energy Regulator**

The annual report required of public entities in terms of the Public Finance Management Act [1999 (Act No. 1 of 1999)] may include any matter that the Energy Regulator deems necessary but must, in respect of electricity, piped-gas and petroleum pipeline matters, include information on -

- (a) licences granted, amended or withdrawn;
- (b) regulations made and directives issued by the Minister;
- (c) the envisaged strategies of the Energy Regulator;
- (d) the existing position and envisaged commercial developments with respect to the electricity, piped-gas and petroleum pipeline industries;
- (e) the position regarding health, safety and environmental matters;
- (f) access to network infrastructure; and
- (g) tariffs or tariff structures set or approved by the Energy Regulator.

**CHAPTER IIA****ENERGY APPEAL BOARD****14A. Appeals**

- (1) Subject to subsection (2), a person whose rights are adversely affected by a decision of the Energy Regulator may appeal against that decision to the Appeal Board in accordance with the provision of this Act.
- (2) The Appeal Board shall only have jurisdiction to hear appeals against:
  - (a) a decision to issue a licence in terms of an underlying statute, or a decision to refuse to issue such a licence, provided that no appeal shall lie against the grant of a licence in the circumstances contemplated in section 13(5) of the Electricity Regulation Act;
  - (b) a decision to issue, or a failure to issue, a direction contemplated in section 7(1D)(b) of the Electricity Regulation Act, section 15(3)(b) of the Gas Act or section 15(2)(b) of the Petroleum Pipelines Act;
  - (c) a decision to refuse to register a person in terms of section 9(b) of the Electricity Regulation Act or section 28 of the Gas Act;



- (d) the imposition of conditions on the registration of a person in terms of section 9(4) of the Electricity Regulation Act;
- (e) a failure to concur with a request for confidential treatment of information in terms of section 10(3) of the Electricity Regulation Act, section 16(3) of the Gas Act or section 16(3) of the Petroleum Pipelines Act;
- (f) a direction contemplated in section 18(b) of the Gas Act or section 18(b) of the Petroleum Pipelines Act;
- (g) the imposition of licence conditions in terms of section 14(1) of the Electricity Regulation Act, section 21(1) of the Gas Act or section 20(1) of the Petroleum Pipelines Act;
- (h) the determination of licence conditions in terms of section 14A(1)(a) of the Electricity Regulation Act;
- (i) the determination of a tariff, maximum tariff or a guideline tariff in terms of section 14A(1)(b) of the Electricity Regulation Act;
- (j) the determination of the term of a licence in terms of sections 20(1) or 20(2) of the Electricity Regulation Act or section 23(1) of the Gas Act;
- (k) a refusal to renew a licence in terms of an underlying statute;
- (l) the setting of different licence conditions when renewing a licence in terms of section 20(4) of the Electricity Regulation Act, section 23(3) of the Gas Act and section 22(4) of the Petroleum Pipelines Act;
- (m) a decision to vary, suspend or remove a licence condition or to include additional conditions in terms of section 16(1) of the Electricity Regulation Act, section 24(1) of the Gas Act and section 23(1) of the Petroleum Pipelines Act;
- (n) a decision to refuse an application referred to in section 16(1)(a) or (e) of the Electricity Regulation Act, section 24(1)(a) or (e) of the Gas Act or section 23(1)(a) or (e) of the Petroleum Pipelines Act;
- (o) the service of a notice or the imposition of a penalty in terms of section 18 of the Electricity Regulation Act, section 26 of the Gas Act or section 25 of the Petroleum Pipelines Act;
- (p) the setting or approval of, or a failure to approve, tariffs in terms of section 28(1) or 28(5)(a) of the Petroleum Pipelines Act; and

- (q) a decision to consent, or to refuse to consent, to an assignment, cession or transfer referred to in sections 20(5) or 21(1) of the Electricity Regulation Act.
- (3) An appeal must be lodged:
- (a) within 30 days of the date on which the affected person became aware of, or ought to have become aware of, the decision being appealed; and
- (b) in the prescribed manner and on payment of the prescribed fee.
- (4) An appeal lodged in terms of this section does not suspend the decision pending the outcome of an appeal, unless the Chairperson, on application by a party, directs otherwise.

#### **14B. Appeal Board**

- (1) The Energy Appeal Board is hereby established as a juristic person, which shall be independent of the Energy Regulator.
- (2) The Appeal Board consists of a Chairperson and not less than three, but not more than six, other members appointed by the Minister, on a full or part-time basis.
- (3) The Chairperson and other members of the Appeal Board, viewed collectively, must –
- (a) have experience and expert knowledge of the electricity, piped gas and petroleum pipelines industries; and
- (b) comprise sufficient persons with legal training and experience to satisfy the requirements of section 14C(2)(a).
- (4) Each member of the Appeal Board must have suitable qualifications and experience in economics, law, commerce or the electricity, piped-gas or petroleum pipelines industries.
- (5) The Minister must designate a member of the Appeal Board as the Deputy Chairperson of the Appeal Board, who shall perform the functions of the Chairperson whenever the office of the Chairperson is vacant or the Chairperson is for any reason temporarily unable to perform the functions of Chairperson.
- (6) A person may not be a member of the Appeal Board if that person-
- (a) is a member of Parliament or a provincial legislature or is a municipal councillor; or

- (b) has been removed from an office of trust; or
- (c) is subject to a ground of disqualification referred to in section 6(1).
- (7) A member of the Appeal Board is appointed for a maximum period of three years.
- (8) The Minister may reappoint a member of the Appeal Board at the expiry of that member's term of office, but no person may be appointed to the office of the Chairperson for more than two consecutive terms.
- (9) A member of the Appeal Board may resign on one month's written notice addressed to the Minister and the Chairperson may resign as the Chairperson but remain as a member of the Appeal Board.
- (10) The Minister -
- (a) must remove a member of the Appeal Board from office if that member no longer meets the criteria referred to in subsection (6);
- (b) may remove a member of the Appeal Board from office -
- (i) for serious misconduct;
- (ii) if the performance of the member is unsatisfactory; or
- (iii) if the member is unable to perform the functions of office effectively.
- (11) Any vacancy that occurs on the Appeal Board must be filled by the appointment of another person by the Minister, subject to the provisions of subsections (3), (4) and (6) and any person so appointed holds office for a period of three years.
- (12) A member of the Appeal Board who is not in the full-time employment of the State must be paid the remuneration, allowances and other benefits as the Minister may from time to time determine.
- (13) The Chairperson is responsible for the management of the day-to-day affairs of the Appeal Board and must exercise administrative control over the resources of the Appeal Board.
- (14) The Chairperson may appoint staff to provide secretarial support for the Appeal Board.
- (15) The employees of the Appeal Board must be paid such remuneration, allowances, subsidies and other benefits as the Chairperson may determine in accordance with the remuneration and benefits structure approved by the Minister with the concurrence of the Minister of Finance.

- (16) The funds of the Appeal Board consist of money appropriated by Parliament for this purpose.
- (17) Section 13, read with the changes required by the context, apply to the Appeal Board, and a reference in that section to the Energy Regulator and the Commissioner must be read as referring to the Appeal Board and the Chairperson, respectively.

**14C. Appeal panels and procedure**

- (1) The Chairperson is responsible for managing the caseload of the Appeal Board and must assign each appeal to a panel composed of any three members of the Appeal Board who are suitably qualified to decide the particular appeal.
- (2) When assigning an appeal in terms of subsection (1), the Chairperson must –
- (a) ensure that at least one member of the panel is a person who has legal training and experience; and
- (b) designate a member of the panel to preside over the panel's proceedings.
- (3) If before or during the consideration of an appeal in which a member is participating, it becomes apparent that the member or a family member of the member has an interest in the appeal, the member must:
- (a) immediately and fully disclose this interest to the Chairperson and the other members of the panel designated to deal with the appeal; and
- (b) withdraw from any further involvement in the appeal.
- (4) If, because of resignation, illness, death or withdrawal from an appeal, a member of the panel is unable to complete the consideration of the appeal, the Chairperson may –
- (a) replace the member of the panel;
- (b) direct that the consideration of the appeal must proceed before the remaining members of the panel; or
- (c) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, to consider the appeal.
- (5) Any party to an appeal may be represented by a legal representative.

- (6) The evidence before the appeal panel shall be limited to the evidence that was before the Energy Regulator at the time of taking the decision that is the subject of the appeal, save where the appeal panel:
- (a) is satisfied that it is in the interests of justice to allow additional evidence; or
  - (b) requests the Energy Regulator or another party to the appeal to submit additional evidence.
- (7) The decision of a panel on any appeal is the decision of the Appeal Board and must be in writing and include reasons for that decision.
- (8) Subject to this Act, the underlying statutes and such procedure as may be prescribed, the person designated in terms of section 14C(2)(b) determines the procedure for the hearing of an appeal.
- (9) The Appeal Board may:
- (a) confirm, set aside, vary or substitute the decision under appeal; or
  - (b) remit the matter for reconsideration by the Energy Regulator.
- (10) The Appeal Board may grant an appropriate costs order against the appellant if it finds that the appeal is frivolous or vexatious.
- (11) An order by the Appeal Board has legal force and may be enforced as if it were issued in civil proceedings in a division of the High Court within whose area of jurisdiction the Appeal Board heard the appeal.

### CHAPTER III

#### GENERAL PROVISIONS

##### **14D. Limitation of liability**

Neither the Energy Regulator nor the Appeal Board nor any other person is liable for any loss or damage caused by anything done or omitted by the Energy Regulator, the Appeal Board or such other person in good faith whilst performing any function of the Energy Regulator or the Appeal Board in terms of this Act or an underlying statute.

##### **14E. Delegation and assignment**

- (1) The Commissioner may, subject to such conditions as he or she may impose, in writing delegate any power conferred on him or her under this Act read with the underlying statutes, except the power in sections 35(1) to (3) of the Electricity Regulation Act, section 34(3) of the Gas Act and section 33(3) of the Petroleum Pipeline Act, and may assign any duty so

imposed on him or her, to a Deputy Commissioner or a suitable employee of the Energy Regulator.

- (2) The Commissioner may at any time:
- (a) withdraw a delegation or assignment made in terms of subsection (1);
  - (b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1);
- (3) The Commissioner is not divested of any power or exempted from any duty delegated or assigned in terms of subsection (1).
- (4) A Deputy Commissioner to whom a power has been delegated or a duty has been assigned in terms of subsection (1) may, subject to such conditions as he or she may impose, delegate such power or assign such duty to a suitable employee of the Energy Regulator.
- (5) Subsections (2) and (3), read with the necessary changes, shall apply to a delegation or assignment contemplated in subsection (4).

#### **14F. Regulations**

The Minister may, by notice in the *Gazette*, make regulations regarding -

- (a) the procedure and functioning of the committees contemplated in section 8(10);
- (a) the procedure for conducting appeals by the Appeal Board, including the conducting of hearings by the Appeal Board;
- (b) any other matter that may or must be prescribed in terms of this Act;  
and
- (c) any other matter which is necessary or expedient to prescribe for the proper implementation or administration of this Act.

#### **15. Repeal and amendment of laws**

The laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column of the Schedule.

#### **16. Transitional provisions**

- (1) As from the date of commencement of this Act -

- [(a) the person who immediately before the commencement of this Act held the office of chief executive officer of the National Electricity Regulator is deemed to be the chief executive officer of the Energy Regulator; ]
- (b) the persons who constituted the other personnel of the National Electricity Regulator immediately before the commencement of this Act are deemed to be the personnel of the Energy Regulator;
- (c) the assets of the National Electricity Regulator vest in the Energy Regulator and the Energy Regulator takes over the liabilities of the National Electricity Regulator.

(2) Decisions of the National Electricity Regulator in force immediately before the date contemplated in section 4(1)(c) remain in force until amended, replaced or repealed by the Energy Regulator.

#### 17. Short title and commencement

This Act is called the National Energy Regulator Act, 2004, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

#### SCHEDULE

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 41 of 1987	Electricity Act, 1987	<p>1. The repeal, with effect from the date contemplated in section 4(1)(c) of the National Energy Regulator Act, 2004, of sections 2, 2A, 5, 5A, 5C, 5D and 21.</p> <p>2. The amendment, with effect from the date contemplated in item 1 by the substitution for the definition of "regulator" of the following definition:  <u>" 'regulator' means the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004;".</u></p>
Act No. 48 of 2001	Gas Act, 2001	<p>1. The repeal of sections 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.</p> <p>2. The amendment of section 1 by the substitution for the definitions of "Gas Regulator" and "distribution" of the following definitions, respectively:  <u>"'Gas Regulator' means the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004;</u>  <u>'distribution' means the distribution of bulk gas supplies and the transportation thereof by pipelines with a general operating pressure of more than 2 bar gauge and less than 15 bar gauge or by pipelines with such other operating pressure as the [Gas Operator] National Energy Regulator may permit according to criteria prescribed by regulation to points of ultimate consumption or to reticulation systems, or to both points of ultimate consumption and to</u></p>

		reticulation systems, and any other activity incidental thereto, and 'distribute' and 'distributing' have corresponding meanings;".
Act No. 75 of 2002	Gas Regulator Levies Act, 2002	The amendment of section 1 by the substitution for the definition of "Gas Regulator" of the following definition: " <b>'Gas Regulator'</b> means the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004;".
Act No. 60 of 2003	Petroleum Pipelines Act, 2003	1. The repeal of sections 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14. 2. The amendment of section 1 by the substitution for the definition of "Authority" of the following definition: " <b>'Authority'</b> means the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004;".