

CHAPTER 13:23

ENERGY REGULATORY AUTHORITY ACT

Act 3/2011

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ACT

To provide for the establishment of the Zimbabwe Energy Regulatory Authority and Board thereof; to provide for its functions and management; to amend the Electricity Act [Chapter 13:19] (Act No. 4 of 2002) and the Petroleum Act [Chapter 13:22] (Act No. 11 of 2006); and board thereof and to provide for matters incidental to or connected with the foregoing.

[Date of commencement : 22 September, 2011.]

ENACTED by the President and the Parliament of Zimbabwe.

PART I

PRELIMINARY

1 Short title and date of commencement

- (1) This Act may be cited as the Energy Regulatory Authority Act, [Chapter 13:23].
(2) This Act shall come into operation on a date to be fixed by the President by Statutory Instrument.

2 Interpretation

In this Act—

- “Authority” means the Zimbabwe Energy Regulatory Authority established by section 3;
“Board” means the Zimbabwe Energy Regulatory Authority Board established by section 5;
“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed in terms of section 26;
“COMESA” means the Common Market for Eastern and Southern Africa established by the Treaty for the establishment of the Common Market for Eastern and Southern Africa states, concluded at Kampala on the 8th November 1993, and in force from the 8th December, 1994, and includes any successor to COMESA;
“consumer” means a consumer of energy services whether provided by a licensee or otherwise;
“energy industry” means the persons in Zimbabwe who, in the private or public sphere are concerned with the generation, procurement, distribution, transportation, transmission and production of energy to consumers thereof;
“energy law” means —
(a) the Electricity Act [Chapter 13:19] (Act No. 4 of 2002);
(b) the Petroleum Act [Chapter 13:22] (Act No. 11 of 2006);
(c) such other enactment as the Minister may by notice in a Statutory Instrument prescribe;
“energy source” means any source of renewable or non renewable energy;
“fixed date” means the date fixed in terms of section 2(1) as the date of commencement of this Act
“licensee” means a person licensed in terms of an energy law or in terms of Part III, as the case may be;
“prescribed” means prescribed in terms of section 7(3);
“recognised international standards” means any regional or international standards embodied in any regional or international agreement to which Zimbabwe is a party;
“renewable energy” means energy generated from natural resources such as sunlight, wind, rain, water, tides, geothermal heat, plants and biomass which are naturally replenished, and “renewable energy source” shall be construed accordingly;
“SADC” means the Southern African Development Community established by the Treaty for the establishment of the Southern African Development Community, concluded at Windhoek on the 17th August, 1992.

PART II

ESTABLISHMENT, FUNCTIONS AND POWERS OF ZIMBABWE ENERGY REGULATORY AUTHORITY AND BOARD

3 Establishment of Zimbabwe Energy Regulatory Authority

There is hereby established an Authority, to be known as the Zimbabwe Energy Regulatory Authority, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

4 Functions and powers of Authority

- (1) The functions of the Authority shall be—
- (a) to regulate the procurement, production, transportation, transmission, distribution, importation and exportation of energy derived from any energy source;
 - (b) to create, promote and preserve an efficient energy industry market for the provision of sufficient energy for domestic and industrial use;
 - (c) to promote the procurement, production, transportation, transmission and distribution of energy in accordance with public demand and recognised international standards;
 - (d) to promote co-ordination and integration in the importation, exportation and pooling of energy from any energy source in the SADC and COMESA region;
 - (e) to exercise licensing and regulatory functions in respect of the energy industry;
 - (f) to ensure that prices charged by licensees are fair to consumers in the light of the need for prices to be sufficient to allow licensees to finance their activities and obtain reasonable earnings for their efficient operation;
 - (g) to maintain and promote effective competition within the energy industry;
 - (h) to promote and encourage the expansion of the energy industry and the advancement of technology relating thereto;
 - (i) to promote, identify and encourage the employment and development of sources of renewable energy;
 - (j) to represent Zimbabwe internationally in matters relating to the energy industry;
 - (k) to advise the Minister on all matters relating to the energy industry;
 - (l) to advise and educate consumers and licensees regarding the efficient use of energy;
 - (m) to ensure the maximisation of access to energy by all consumers that is affordable and environmentally sustainable;
 - (n) to establish appropriate consumer rights and obligations regarding the provision of energy services;
 - (o) to establish or approve operating codes for safety, security, reliability, quality standards and any other sector related codes and standards for the energy industry or any sector thereof;
 - (p) to arbitrate and mediate disputes among and between licensees and consumers;
 - (q) to assess, promote studies of and advise the Minister and licensees on the environmental impact of energy projects before licensing;
 - (r) to undertake such other thing which it considers is necessary or convenient for the better carrying out of or giving effect to the functions of the Authority.
- (3) Subject to this Act, the Authority shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Act, either absolutely or conditionally and either solely or jointly with others.
- (4) Subject to this Act, the Authority shall not, in the lawful exercise of its functions under this Act, be subject to the direction or control of any person or authority.

5 Establishment of Zimbabwe Energy Regulatory Authority Board

The operations of the Authority shall, subject to this Act, be controlled and managed by a board to be known as the Zimbabwe Energy Regulatory Authority Board.

6 Constitution of Board

- (1) Subject to subsection (2), the Board shall consist of not less than six and not more than nine members (of whom at least four shall be women) appointed by the Minister with the approval of the President.
- (2) In appointing the members of the Board the Minister shall endeavour to secure that members are representative of groups or sectors of the community whose knowledge, ability or experience is useful to the energy industry, and, in particular—
- (a) one shall be chosen for his or her knowledge of, ability and experience in finance and administration; and
 - (b) one shall be chosen for his or her knowledge of, ability and experience in the electrical industry; and
 - (c) one shall be chosen for his or her knowledge of, or ability and experience in the Petroleum Industry; and
 - (d) one shall be a person who is and has been, for not less than seven years, whether continuously or not, qualified to practise as a legal practitioner in terms of the Legal Practitioners Act [*Chapter 27:07*]; and
 - (e) one shall be a person who is and has been, for not less than seven years, whether continuously or not, qualified to practise as an engineer in terms of the Engineering Council Act [*Chapter 27:22*] (No. 3 of 2008).
- (3) The terms and conditions of office, vacation of office, filling of vacancies, meetings and procedures of the Board and other related matters are set out in the Schedule.

PART III

LICENSING REGIME FOR ENERGY SOURCES NOT PROVIDED FOR UNDER OTHER ENERGY LAWS

7 Licensing requirement

(1) The Board may, with the concurrence of the Minister and after consultation with concerned stakeholders, declare by notice in a Statutory Instrument that any specified energy source not regulated by or under any other enactment shall be subject to licensing under this Part.

(2) The effect of a declaration under subsection (1) is that no person shall in relation to the declared energy source, engage in the generation, procurement, distribution, transportation, transmission and production of the energy source for gain or reward unless that person is licensed under this Part.

(3) The Authority may, with respect to any energy source declared in terms of subsection (1), make regulations providing for any of the following matters—

- (a) the allocation or auctioning of licences for commercially exploiting the energy source in question;
- (b) the environmental, occupational and consumer safety standards to be observed in relation to the extraction, production, refining and distribution of the energy source in question;
- (c) where appropriate, provision for ensuring the compatibility of the energy source with, or in its incorporation into, the national power grid;
- (d) the standards for obtaining the highest energy efficiency from the energy source in question;
- (e) the standardisation of equipment to be used in connection with production, generation or distribution of the energy source in question;
- (f) provisions relating to consumer tariffs;
- (g) fees, levies, and other charges that may be payable by licensees or consumers in connection with the commercial exploitation of the energy source in question;
- (h) general licence terms and conditions applicable to the sector of the energy industry concerned with the exploitation of the energy source in question;
- (i) the powers of any inspector or employee of the Authority to enter and inspect without warrant any premises licensed or required to be licensed under this Act, and to search for and seize documents or things for the purpose of investigating any offence or suspected offence against this Act;
- (j) penalties for contraventions of the regulations not exceeding a fine of level fourteen or imprisonment for a period not exceeding five years, or both such fine and such imprisonment.

(4) Regulations made by the Authority in terms of subsection (3) shall not come into effect until they have been approved by the Minister and published in the *Gazette* by way of a Statutory Instrument.

8 General duties of licensees

(1) A licensee shall comply with the provisions of its licence, any regulations made under section 7(3) and any code of conduct or standard issued by the Authority from time to time.

(2) Subject to the terms and conditions of its licence, it shall be the duty of every licensee to provide its licensed services efficiently and maintain an efficient and economic procurement, supply or production system, as the case may be.

9 Restriction on transfer, assignment and ceding of licences

A licensee shall not assign or cede its licence or transfer its undertaking, or any part thereof, by way of sale, lease, exchange or otherwise, without the prior consent of the Authority:

Provided that, if the Authority determines that the circumstances so require, it may fix licence terms and conditions providing its specific or general consent to the transfer of the licence or of any undertaking covered by the licence.

10 Licence application

(1) An application for a licence shall be made to the Authority in the form and manner prescribed and be accompanied by the prescribed fee, if any, and such information or documents as may be prescribed or as the Authority may require.

(2) An application submitted in terms of subsection (1) shall be acknowledged by the Authority within fourteen days of its submission to the Authority.

(3) Subject to subsection (6), if, on consideration of an application in terms of subsection (1), the Authority is satisfied that—

- (a) the applicant will comply with this Act and with the general licence terms and conditions applicable to the sector of the energy industry concerned with the exploitation of the energy source in question; and
- (b) the grant of the licence does not infringe the rights of any other licensees; and
- (c) the grant of the licence is in the public interest;

the Authority shall issue the appropriate licence to the applicant.

(4) Within thirty days after the issue of a licence referred to in subsection (3) the Authority shall, at the licensee's expense, cause the licence to be published in the *Gazette* and in a newspaper circulating in the area in which the licensee intends to have its principal place of business.

(5) If, on consideration of an application in terms of subsection (1) the Authority is not satisfied as to the matters referred to in subsection (3), it shall refuse to issue a licence to the applicant concerned:

Provided that—

(a) before so refusing, the Authority shall notify the applicant in writing of its intention to do so and afford the applicant an adequate opportunity to make representations on the matter;

(b) within twenty days after its refusal to issue a licence on any ground, the Authority shall notify the applicant in writing of its decision and of the reasons for it.

(6) The period between the Authority's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which it notifies the applicant of its final decision, shall not exceed six months unless the applicant consents to an extension of the period.

11 Terms and conditions of licences

(1) A licence shall be issued subject to such terms and conditions as may be prescribed or as the Authority may reasonably determine in the circumstances.

(2) Without derogation from the generality of subsection (1), the terms and conditions of a licence may require the licensee to—

(a) enter into agreements on specified terms with other persons in the sector of the energy industry concerned with the exploitation of the energy source in question;

(b) refer disputes between the licensee and any other licensee for arbitration, mediation or determination by the Authority.

(3) There shall be in every licence a condition requiring the licensee to prepare and submit to the Authority each year an annual statement of accounts in such form, and containing such particulars, as may be prescribed or as the Authority may require.

12 Renewal of licences

(1) A licensee may apply for the renewal of its licence.

(2) An application for the renewal of a licence shall be made to the Authority in the form and manner and within the period prescribed, and be accompanied by the prescribed fee, if any.

(3) The Authority shall renew a licence, provided that there is no evidence to prove that the licensee contravened or is in contravention of any provision of this Act.

13 Amendment of licences

(1) The Authority may at any time amend a licence—

(a) to correct any manifest error in the licence; or

(b) if the licensee requests the amendment; or

(c) if the amendment is made pursuant to a condition of the licence.

(2) Where a licensee requests an amendment of its licence, it shall publish a notice of the proposed alterations or amendments to his or her licence in such manner and with such particulars as may be specified by the Authority, stating the period within which objections or representations in connection with the amendments may be made to the Authority, and the Authority shall not amend any licence until all objections received by it have been considered.

14 Enforcement of licences

(1) Without derogating from section 15, where the Authority is satisfied that a licensee is contravening, has contravened or is likely to contravene any of the conditions of its licence, the Authority may, subject to subsection (2), serve upon the licensee an order—

(a) requiring the licensee to do, or not to do, such things as are specified in the order for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the licence; and

(b) stipulating the period within which any requirement referred to in paragraph (a) shall be commenced and completed.

(2) Before serving an order, the Authority shall serve a notice upon the licensee setting out the proposed order and affording the licensee an opportunity to make representations to the Authority within thirty days from the date of service of the notice.

(3) After considering any representations, the Authority may serve, or refrain from or defer serving, an order.

(4) An order may specify a penalty for each day that the licensee subjected to the order is in default of compliance with the order, not exceeding the period and amount prescribed.

(5) The Authority may recover any penalty under an order through any civil court of competent jurisdiction as if the penalty was a debt due to itself from the licensee concerned, and the amount of the penalty (whether paid by the licensee or recovered under this subsection) shall form part of the funds of the Authority.

(6) Civil proceedings for specific performance, an interdict, damages, or other appropriate relief in respect of any contravention or threatened contravention of an order may be brought against the licensee concerned by the Authority or by any person affected by the contravention or threatened contravention.

15 Cancellation of licences

(1) The Authority may, on its own initiative or upon receiving a complaint from—

- (a) any consumer;
- (b) any other licensee;

conduct an inquiry into the operations of any licensee to determine its compliance with this Act and its licence.

(2) In conducting an inquiry, the Authority shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply with such changes as may be necessary in relation to the inquiry.

(3) If, after an inquiry, the Authority is satisfied that—

- (a) the licensee has contravened this Act; or
- (b) the licensee has failed to comply with any term or condition of its licence; or
- (c) the financial position of the licensee is such that it is unable to fully and efficiently discharge the duties and obligations imposed on it by this Act or its licence;

the Authority may cancel the licence.

(4) The Authority shall notify the licensee in writing of the material facts of the inquiry and the date and venue of an inquiry and shall allow the licensee an opportunity to make representations at the inquiry.

(5) A licensee aggrieved by the decision of the Authority shall appeal to the Minister.

16 Form of licences

A licence shall be in the prescribed form and shall specify—

- (a) the type or nature of the licence; and
- (b) the name of the licensee; and
- (c) the date of issue and expiry of the licence; and
- (d) any terms and conditions subject to which the licence is issued; and
- (e) any other matters which the Authority considers necessary.

17 Register of licences

(1) The Authority shall maintain or cause to be maintained a register of licences in which shall be recorded, in relation to each licence—

- (a) the name of the licensee; and
- (b) the type or nature of the licence; and
- (c) the duration of the licence; and
- (d) any specific terms and conditions subject to which the licence was issued; and
- (e) any renewal, amendment, suspension or cancellation of the licence.

(2) The register shall be open for inspection by members of the public at all reasonable times at the offices of the Authority on payment of a prescribed fee, if any.

PART IV

FINANCIAL PROVISIONS

18 Funds of Authority

(1) The funds of the Authority shall consist of—

- (a) fees, levies and other income accruing to the Authority from licences issued and other things done by it in terms of the energy laws or this Act; and
- (b) such moneys as may be payable to the Authority from moneys appropriated for the purpose by Act of Parliament; and
- (c) such other moneys as may vest in or accrue to the Authority, whether in the course of its operations or otherwise.

(2) The Authority shall keep the following separate accounts—

- (a) the Electricity Account, in respect of fees, levies and other income accruing to the Authority from licences issued and other things done by it in terms of the Electricity Act [*Chapter 13:19*] (Act No. 4 of 2002);
- (b) the Petroleum Account, in respect of fees, levies and other income accruing to the Authority from licences issued and other things done by it in terms of the Petroleum Act [*Chapter 13:22*] (No. 11 of 2006);
- (c) the General Energy Account, in respect of fees, levies and other income accruing to the Authority from licences issued and other things done by it in terms of the Part IV.

19 Investment of moneys not immediately required by Authority

Moneys not immediately required by the Authority may be invested in such manner as the Authority, after consultation with the Minister, considers appropriate.

20 Financial year of Authority

The financial year of the Authority shall be the period of twelve months ending on the 31st December in each year or such other date as the Minister may prescribe by notice in a Statutory Instrument.

21 Accounts of Authority

(1) The Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Authority's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) Not later than six months after the end of each financial year of the Authority, the Authority shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

(3) The Authority shall keep appropriate accounting records to comply with the accounting standards and policies applicable from time to time

22 Audit of Authority's accounts

(1) Subject to the Public Finance Management Act [*Chapter 22:19*] (No. 12 of 2009), the Authority shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts kept by the Authority in terms of section 21(1) shall be examined by the auditors.

(3) The auditors shall make a report to the Board and the Minister on the financial statements prepared in terms of section 21(2) and such report shall state whether or not in their opinion the financial statements gives a true and fair view of the Authority's affairs.

(4) In addition to the report referred to in subsection (3), the Minister may require from the auditors such other reports, statement or explanations in connection with the Authority's operations, funds and property as the Minister may consider expedient.

23 Powers of auditors

(1) An auditor referred to in section 22 shall be entitled at all reasonable times to require to be produced to him or her all accounts and other records relating to such accounts which are kept by the Authority or its agents and to require from any member of the Board or employee or agent of the Authority such information and explanation as in the auditor's opinion are necessary for the purposes of his or her audit.

(2) Any member of the Board or employee or agent of the Authority who fails without just cause to comply with a requirement of an auditor in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

PART V

MISCELLANEOUS PROVISIONS RELATING TO AUTHORITY

24 Minister may give policy directions

(1) The Minister may give the Board such general directions in writing relating to the policy the Authority is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest.

(2) The Board shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(3) When any direction has been given to the Board in terms of subsection (1), the Board shall ensure that the direction and any views the Board has expressed on it are set out in the Authority's annual report.

25 Reports of Authority

(1) In addition to any report which the Authority is required to submit to the Minister in terms of this Act or the Public Finance Management Act [*Chapter 22:19*] (No. 12 of 2009), the Authority—

(a) shall submit to the Minister such other reports as the Minister may require; and

(b) may submit to the Minister such other reports as the Authority considers advisable;

in regard to the operations and property of the Authority.

(2) The Minister shall, within six months of the end of the Authority's financial year, lay before Parliament a report submitted to him or her by the Authority in terms of subsection (1), together with the statement of accounts and auditor's report for the preceding financial year of the Authority referred to in sections 21 and 22.

26 Chief Executive Officer and other employees of Authority

(1) For the better exercise of the functions of the Authority the Board shall, in consultation with the Minister, appoint a person to be the Chief Executive Officer of the Authority, on such terms and conditions as the Board, with the approval of the Minister, may fix.

(2) The Board shall terminate the appointment of the Chief Executive Officer if he or she would be required in terms of paragraph 4(b) or (c) of the Schedule to vacate his or her office had that paragraph and paragraph 3(1)(a), (b) and (c), and subparagraph (2) of that paragraph, applied to him or her.

(3) The Board shall not terminate the services of the Chief Executive Officer on a ground other than one referred to in subsection (2) without the approval of the Minister.

(4) The Board shall employ such persons in addition to the Chief Executive Officer as it considers expedient for the better exercise of the functions of the Authority.

(5) Subject to the general control of the Board, the Chief Executive Officer shall be responsible for—

(a) managing the operations and property of the Authority;

(b) supervising and controlling the activities of the employees of the Authority in the course of their employment.

(6) The Board may assign to the Chief Executive Officer such of the functions of the Board as the Board thinks fit:

Provided that the Board shall not assign to the Chief Executive Officer any duty that has been assigned to the chairperson of the Board.

(7) Any assignment of functions in terms of subsection (6) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Board may determine, and may be revoked by the Board at any time.

(8) The Chief Executive Officer shall have the right to attend meetings of the Board and, except in the case of any discussion relating to the terms and conditions of his or her appointment, to take part in the proceedings of the Board as if he or she were a member, but shall not have a vote on any question before the Board.

27 Exemption from liability for Authority

No liability shall attach to the Authority or any employee of the Authority or the Board or a member of the Board or any committee of the Board for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Authority or the Board:

Provided that this section shall not be construed so as to prevent any person from recovering compensation for any loss or damage sustained by him or her which was caused by gross negligence or recklessness.

PART VI

GENERAL

28 Notice of accidents

(1) Every licensee shall send to the Authority and the Minister notice of any accident of such kind as to have caused, or is likely to have caused, loss of life or serious personal injury which has occurred in any part of the licensee's undertaking, together with notice of any loss of life or serious personal injury occasioned by any such accident, within forty-eight hours of the occurrence of the accident.

(2) Nothing contained in subsection (1) shall absolve licensee from the need to comply with any other enactment relating to the reporting of accidents.

(3) A licensee who fails to comply with subsection shall be guilty of an offence and liable to a fine up to or exceeding level fourteen.

29 Savings

(1) The Authority shall be regarded for all purposes as the successor of the Electricity Regulatory Commission and the Petroleum Regulatory Authority, to which end—

(a) the assets and liabilities of the Zimbabwe Electricity Regulatory Commission and the Petroleum Regulatory Authority in existence immediately before the fixed date shall be regarded, with effect from the fixed date, as assets and liabilities of the Authority;

(b) any rights which, immediately before the fixed date, could have been enforced by or against the Electricity Regulatory Commission and the Petroleum Regulatory Authority may be enforced on and after that day by or against the Authority:

Provided that, before the Authority succeeds to the assets, liabilities, rights and obligations of Electricity Regulatory Commission, the auditors of the Electricity Regulatory Commission shall conduct an audit into the operations of the Commission for the period beginning after the end of its last financial year and ending on such date as the Minister shall specify in writing to the auditors and the Board, and after completing the audit the auditors shall submit a report thereon to the Minister.

(2) Any licence, certificate or permit issued or regulations or rules made, or application or registration effected by the Zimbabwe Electricity Regulatory Commission or the Petroleum Regulatory Authority which, immediately before the fixed date, was in force or effect or capable of acquiring force or effect shall, subject to this Act, continue to have or acquire force or effect, as the case may be, and shall, on and after that day, be deemed to have been issued, made or determined under this Act.

(3) In this section—

“Electricity Regulatory Commission” means the Commission established by section 3 of the Electricity Act [*Chapter 13:19*] (No. 4 of 2002), before the substitution of that section by section 31(b) of this Act;

“Petroleum Regulatory Authority” means the Authority established by section 3 of the Petroleum Act [*Chapter 13:22*] (No. 11 of 2006), before the substitution of that section by section 32(b) of this Act.

30 Transitional Provision

For the avoidance of doubt it is declared that any licence which was issued in terms of the Electricity Act [*Chapter 13:19*] (No. 4 of 2002) or the Petroleum Act [*Chapter 13:22*] (No. 11 of 2006) and which had effect immediately before the fixed date shall continue to have effect, with any changes that may be necessary, for the remainder of its period of validity.

31 Amendment of Cap. 13:19 (No. 4 of 2002)

The Electricity Act (No. 4 of 2002) is amended—

(a) in section 2 (“Interpretation”) by the repeal of the definitions of “Authority” and “Commission” and the substitution of—

““Authority” means the Zimbabwe Energy Regulatory Authority established by section 3 of the Energy Regulatory Authority Act [*Chapter 13:23*] (No. 3 of 2011);

“Zimbabwe Energy Regulatory Authority Board” or “Board” means the Zimbabwe Energy Regulatory Authority Board referred to in section 5 of the Energy Regulatory Authority Act [*Chapter 13:23*] (No. 3 of 2011)”;

(b) by the repeal of section 3 and the substitution of—

“3 Functions under this Act to be performed by Zimbabwe Energy Regulatory Authority Board

The Zimbabwe Energy Regulatory Authority Board shall perform all functions which, in terms of this Act, were performed by the Electricity Regulatory Commission established by section 3 of this Act before its substitution by the Energy Regulatory Authority Act [*Chapter 13:23*] (No. 3 of 2011), 2010, and references in this Act to the “Commission”, a “Commissioner” or an inspector or employee of the Commission shall be construed as references to the “Board”, a “member of the Board” and an inspector or employee of the Authority respectively.”;

(c) in Part III (“Electricity Regulatory Commission”) by the repeal of sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16;

(d) in Part V (“Financial Provisions”)—

(i) by the repeal of sections 25 and 26;

(ii) by the repeal of section 27 and the substitution of—

“27 Surplus funds of Electricity Account to be appropriated to Rural Electrification Fund

If there is any surplus of income over expenditure in the Electricity Account referred to in section 18(2)(a) of the Energy Regulatory Authority Act [*Chapter 13:23*] (No. 3 of 2011), at the end of the Authority’s financial year, the surplus shall be appropriated to the Rural Electrification Fund.”;

(iii) by the repeal of sections 28, 29, 30 and 31;

(e) by the repeal of Part VII;

(f) in section 44 (“Distribution and retail supply licences”)(i) by the repeal of paragraph (b) and the substitution of—

“(b) the installation, maintenance and reading of electricity meters, billing and collection:

Provided that the terms of the licence may stipulate that the licensee may require certain classes of consumers of its services to install and maintain electricity meters of a prescribed type and standard;”.

(2) The ancillary powers which, in terms of section 4(3) and the First Schedule to the Electricity Act [*Chapter 13:19*] (No. 4 of 2002), were exercisable by the Electricity Regulatory Commission established by section 3 of that Act before its substitution by this Act, shall be deemed to be ancillary powers exercisable by the Authority in terms of this Act.

32 Amendment of Cap 13:22 (Act No. 11 of 2006)

The Petroleum Act [*Chapter 13:22*] (No. 11 of 2006) is amended—

(a) in section 2 (“Interpretation”) by the repeal of the definitions of “Authority”, “Board”, “Chief Executive Officer” and “licence” and the substitution of—

““Authority” means the Zimbabwe Energy Regulatory Authority established by section 3 of the Energy Regulatory Authority Act [*Chapter 13:23*] (No. 3 of 2011);

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed in terms of section 26 of the Energy Regulatory Act [*Chapter 13:23*] (No. 3 of 2011);

“licence” means a procurement, wholesale, retailing or production licence issued in terms of Part VI;

“Zimbabwe Energy Regulatory Authority Board” or “Board” means the Zimbabwe Energy Regulatory Authority Board referred to in section 5 of the Energy Regulatory Authority Act [*Chapter 13:23*] (No. 3 of 2011);

(b) by the repeal of section 3 and the substitution of—

“3 Functions under this Act to be performed by Zimbabwe Energy Regulatory Authority and Board Thereof

The Zimbabwe Energy Regulatory Authority and the Zimbabwe Energy Regulatory Authority Board shall perform all functions which, in terms of this Act, were performed by the Petroleum Regulatory Commission established by section 3 of this Act and the Petroleum Regulatory Authority Board referred to in section 5 of this Act before their substitution or repeal by the Energy Regulatory Authority Act [*Chapter 13:23*] (No. 3 of 2011);

(c) in section 4 (“Functions and powers of Authority”), by the repeal of subsections (2) and (3);

(d) by the repeal of Part III;

(e) in Part IV (“Financial Provisions”)—

(i) by the repeal of section 19;

(ii) by the repeal of section 20 and the substitution of—

“20 Investment of moneys in Petroleum Account not immediately required by Authority

Moneys standing to the credit of the Petroleum Account referred to in section 18(2)(b) of the Energy Regulatory Authority Act [*Chapter 13:23*] (No. 3 of 2011);, may be invested in such manner as the Authority considers appropriate”;

(iii) by the repeal of section 21, 22, 23 and 24;

(f) by the repeal of Part V;

(g) in Part VI (“Licences”) by the insertion after section 31 of the following section—

“31A Wholesale licence

(1) A wholesale licence shall authorise the licensee to purchase bulk petroleum products from any procurement licensee and production licensee.

(2) A wholesale licence shall supply petroleum products to retailing licensees.”;

(h) by the repeal of the Schedule.

SCHEDULE (SECTION 6(3))

PROVISIONS APPLICABLE TO BOARD AND COMMITTEES

Paragraph

1. Interpretation in Schedule.
2. Terms of office and conditions of service of members.
3. Disqualifications for appointment as member.
4. Vacation of office by member.
5. Dismissal or suspension of member.
6. Filling of vacancies on Board.
7. Chairperson and vice-chairperson.
8. Meetings and procedure of Board.
9. Committees of Board.
10. Remuneration and expenses of members and members of committees.
11. Validity of decisions of Authority.
12. Minutes of proceedings of Authority and committees.
13. Members of the authority to disclose certain connection and interests.

1. Interpretation in Schedule

In this Schedule—

“member” means a member of the Board.

2. Terms of office and conditions of service of members

(1) Subject to this Schedule, a member shall hold office for such period, not exceeding five years, as the Minister may fix on his or her appointment.

(2) A member shall continue in office after the expiry of his or her term until he or she has been re-appointed or his or her successor has been appointed:

Provided that a member shall not hold office in terms of this subparagraph for longer than six months.

(3) Subject to subparagraph (1), a member shall hold office on such terms and conditions as the Minister may fix in relation to members generally.

(4) A retiring member is eligible for re-appointment as a member:

Provided that no member may be re-appointed for a third term in office.

(5) The terms and conditions of office of a member shall not, without the member's consent, be altered to his or her detriment during his or her tenure of office.

3. Disqualifications for appointment as member

(1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

(a) is not a citizen of Zimbabwe; or

(b) has, in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;

or

(c) has, immediately preceding the date of his or her proposed appointment, been convicted—

(i) in Zimbabwe, of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

and sentenced to a term of imprisonment imposed without the option of a fine.

(2) A person who is—

(a) a member of Parliament; or

(b) a member of two or more other statutory bodies;

shall not be appointed as a member, nor shall he or she be qualified to hold office as a member.

(3) For the purposes of subparagraph (2)(b) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

4. Vacation of office by member

A member shall vacate his or her office and his or her office shall become vacant—

(a) on the date which he or she indicates as his or her date of resignation; or

(b) on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine—

(i) in Zimbabwe, in respect of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

or

(c) if he or she becomes disqualified in terms of paragraph 3 (1) (a), (b) or (c) or in terms of subparagraph (2) of that paragraph, to hold office as a member; or

(d) if he or she is required in terms of paragraph 5 to vacate his or her office.

5. Dismissal or suspension of members

(1) The Minister may require a member to vacate his or her office if the member—

(a) has, subject to subparagraph (3), been found to have conducted himself or herself in a manner that renders him or her unsuitable as a member; or

(b) has failed to comply with any term or condition of his or her office fixed by the Minister; or

(c) is mentally or physically incapable of efficiently carrying out his or her functions as a member; or

(d) has been absent without the permission of the Board from two consecutive meetings of the Board of which he or she was given at least seven days' notice, and there was no just cause for the member's absence.

(2) The Minister may suspend a member—

(a) whom he or she suspects on reasonable grounds of having been guilty of conduct referred to in subparagraph (1)(a); or

(b) against whom criminal proceedings have been instituted for an offence and in respect of which a sentence of imprisonment without the option of a fine may be imposed;

and while that member is so suspended he or she shall not carry out any functions as a member.

(3) A member suspended in terms of subparagraph (2)(a) shall be given notice in writing of the grounds for the suspension and may, within fourteen days of being so notified, make written representations to the Minister showing cause why no finding of misconduct rendering him or her unsuitable to be member of the Board should be made.

(4) The Minister, after consultation with the President, shall require a member suspended in terms of subparagraph (2)(a) to vacate his or her office if—

- (a) no representations are made by the member in terms of subparagraph (3); or
- (b) the Minister finds that, notwithstanding representations made in terms of subparagraph (3), the member is guilty of the misconduct alleged.

6. Filling of vacancies on Board

On the death of, or vacation of office by, a member, the Minister may appoint a qualified person to fill the vacancy:

Provided that if as a result of the vacancy the number of members falls below the minimum number specified in this Act, the Minister shall fill the vacancy within three weeks.

7. Chairperson and vice-chairperson of Board

(1) The Minister shall designate one of the members to be chairperson and the other to be vice chairperson of the Board.

(2) The chairperson and vice-chairperson of the Authority may at any time, by written notice to the Minister resign their offices as such.

(3) Within three weeks after being notified of a vacancy in the office of chairperson or vice-chairperson of the Board, the Minister shall appoint another member to fill the vacancy.

(4) The vice-chairperson of the Board shall perform the functions of the chairperson whenever the chairperson is unable to perform them or the office of the chairperson is vacant.

8. Meetings and procedure of Board

(1) The Board shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the fixed date, and thereafter the Board shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet not less than six times in each financial year of the Authority.

(2) The chairperson of the Board—

- (a) may at any time convene a special meeting of the Board; and
- (b) shall convene a special meeting of the Board on the written request of not fewer than two members, not later than fourteen days after his or her receipt of such request.

(3) Written notice of any special meeting shall be sent to each member not later than seven days before the meeting and shall specify the business for which the meeting has been convened:

Provided that if, in the opinion of the chairperson, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.

(4) No business shall be discussed at a special meeting other than—

- (a) such business as may be determined by the chairperson of the Board, where he or she has convened the meeting in terms of subparagraph (2)(a); or
- (b) the business specified in the request for the meeting, where he or she has convened the meeting in terms of subparagraph (2)(b).

(5) The chairperson or, in his or her absence, the vice-chairperson shall preside at all meetings of the Board:

Provided that, if the chairperson and the vice-chairperson are both absent from a meeting of the Board, the members present may elect one of their number to preside at that meeting as chairperson.

(6) Five members shall form a quorum at any meeting of the Board.

(7) All acts, matters or things authorised or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(8) Subject to this paragraph, at all meetings of the Board each member present shall have one vote on each question before the Board and, in the event of an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote.

(9) Any proposal circulated among all members and agreed to in writing by a majority of all members shall have the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such proposal be placed before a meeting of the Board, this subparagraph shall not apply to such proposal.

9. Committees of Board

(1) For the better exercise of its functions, the Board may establish one or more committees and vest in the committees such of its functions as it thinks fit:

Provided that the vesting of any functions in a committee shall not divest the Board of those functions in relation to any matter that has not been decided by the committee.

(2) Where it has established a committee, the Board —

(a) shall appoint at least one member of the Board to be a member of the committee and shall designate that member, or one of those members, as the case may be, to be chairperson of the committee; and

(b) subject to subparagraph (3), may appoint persons who are not members of the Board to be members of the committee.

(3) The Authority shall not appoint a person to be a member of a committee if he or she is disqualified in terms of paragraph 2 from appointment as a member of the Board.

(4) The office of a member of a committee of the Board shall terminate—

(a) in the case of a member who is a member of the Board, upon his or her ceasing to be a member of the Board;

(b) in the case of a member who is not a member of the Board, if he or she would be required in terms of paragraph 3 to vacate office had that paragraph and paragraph 4(1) (a), (b) and (c) applied to him or her.

(5) Subject to this paragraph, members of committees of the Board shall hold office on such conditions as the Board may fix for members of committees generally.

(6) The chairperson of the Board may at any time and place convene a meeting of a committee of the Board.

(7) The procedure to be followed at any meeting of a committee of the Board shall be fixed by the Board.

10. Remuneration and expenses of members of Board and members of committees

(1) Members and members of committees of the Board shall be paid from the funds of the Authority—

(a) such remuneration, if any, as the Board, with the approval of the Minister, may from time to time fix for such members generally; and

(b) such allowances as the Board, with the approval of the Minister, may from time to time fix to meet any reasonable expenses incurred by such members in connection with the business of the Board or of the committee concerned, as the case may be.

(2) The remuneration of a member or member of a committee of the Board shall not, without the member's consent, be altered to his or her detriment during his or her tenure of office.

11. Validity of decisions and acts of Board

No decision or act of the Authority or act done under the authority of the Authority shall be invalid on the ground that—

(a) the Board consisted of fewer than the number of persons prescribed in paragraph 8(6); or

(b) a disqualified person acted as a member of the Board at the time the decision was taken or act was done or authorised:

Provided that the Board shall ratify any such decision or action within a month after it becomes aware that the decision or action was taken in the circumstances described in paragraph (a) or (b).

12. Minutes of proceedings of Board and committees

(1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board or of a committee of the Board to be entered in books kept for the purpose.

(2) Any minutes which purport to be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

13. Members to disclose certain connections and interests

(1) In this paragraph—

“relative”, in relation a member, means the member's spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

(a) if a member—

(i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interest coming or appearing to come into conflict with his or her functions as a member; or

(iii) knows or has reason to believe that a relative of his—

- A. has acquired or holds direct or indirect interest in any matter that is under consideration by the Authority; or
- B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interest coming or appearing to come into conflict with his or her functions as member;

or

- (b) if for any reason the private interest of a member comes into conflict with his or her functions as a member;

the member shall forthwith disclose the facts to the Authority.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to any contract, right, immovable property or interest referred to in the subparagraph.

(4) A member who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.