

LEGAL NOTICE NO. 195 OF 2016

ELECTRICITY ACT, 2007  
(Act No. 3 of 2007)

ELECTRICITY LICENCING BYLAWS, 2016  
(Under Section 21)

ARRANGEMENT OF REGULATIONS

1. Citation and Commencement.
2. Interpretation.
3. Application for licence.
4. Advertising.
5. Objections.
6. Consideration of licence applications.
7. Issue of licence.
8. Amendment or revocation of licence or licence conditions.
9. Exemption from obligation to hold a licence.
10. Application for exemption to hold licence.
11. Approval of exemption.
12. General obligations for exempted persons.
13. Renewal of exemption.
14. Application fee.
15. Rendering information.
16. Mediation.
17. Arbitration.
18. Arbitration process.
19. Arbitration award.
20. Costs of mediation and arbitration.
21. Tribunal.
22. Complaints, enquiries and investigations.

23. Non- compliance and rectification.

In exercise of the powers conferred by section 21 of the Electricity Act, 2007, The Minister of Natural Resources and Energy, makes the following Bylaws-

*Citation and commencement.*

1. (1) This Notice may be cited as the Electricity Licensing Bylaws 2016.

(2) This Notice shall come into force on the date of publication in the gazette.

*Interpretation.*

2. In these bylaws, unless the context otherwise requires, a word or expression defined in the Act has the same meaning, and -

“Authority” means the Energy Regulatory Authority established under the Energy Regulatory Authority Act, 2007;

“by law” means these bylaws, as amended from time to time;

“dispute” means a dispute between licensees, or between a licensee and a consumer;

“exemption” means an exemption to apply for or hold a licence;

“ licence” means a generation, transmission, system operation, distribution, supply, import or export licence or a combination of any of these activities, and includes a condition to which a licence is made subject;

“mediation” means mediation proceedings contemplated in section 40(2) of the Act; “nationality” means the nationality of an applicant or . person objecting to the issue of a licence;

“SZNS” means the Swaziland National Standards,

“SZNS 026” means the standards published by the Swaziland Standards Authority relating to the supply quality requirements, service and reporting guidelines standards to be maintained by licensees;

“SZNS 028” means the standards published by the Swaziland Standards Authority relating to the quality of electricity supply to be maintained by licensees;

“off grid and mini-grid supply scheme” means an off-grid or mini grid supply scheme contemplated in section 67(1)(j) of the Act;

“own use” means a person who generates, transmits or distributes electricity for his or her exclusive own use at one site or a site contiguous thereto;

“party” means a party to a dispute;

“Quality of Supply and Service Standards” means the quality of supply and service standards set out in these bylaws;

“regulated tariff” means a regulated tariff as contemplated in section 32( 1) of the Act, and includes any rate, charge or fee subject to tariff regulation;

"tariff methodology" means a tariff methodology approved by the Authority in terms of section 32(4) to (10) of the Act:

"the Act" means the Electricity Act No.3 of 2007: and

"Tribunal" means the electricity disputes tribunal as defined in the Act.

*Application for licence.*

3. (1) An application for the issue, renewal, amendment, transfer or revocation of a licence shall be made in the prescribed form determined by the Authority and shall be accompanied by a non-refundable application fee prescribed under the Licence Fee Regulations.

(2) The following information, in so far as it is applicable to a particular application, shall be included in an application contemplated in subsection (1)-

- (a) a full description of the applicant;
- (b) all vertical and horizontal relationships with other persons engaged in generation, transmission, distribution or supply activities, or the import or export of electricity;
- (c) the physical and postal address of the applicant, provided that in the case of an application for a transfer of a licence, this information shall be provided with regard to both the licensee and the proposed transferee;
- (d) the type of application, namely an application for the issue, renewal, amendment, transfer or revocation of a licence or part thereof;
- (e) a description of the proposed type of activity to which the application applies, namely generation, transmission, system operator, distribution, supply, importation or export of electricity including maps and diagrams where appropriate;
- (f) a general description of the type of customers to be served;
- (g) in the event that the applicant will be performing activities subject to tariff regulation, a detailed list of the tariffs to be applied for consideration by the Authority;
- (h) the plans and the ability of the applicant to comply with applicable labour, health, safety and environmental legislation, grid codes or standards applicable;
- (i) a detailed specification of the services that will be rendered under the licence;
- (j) an outline of the intended operational and business plan of the applicant, including an estimate of the expected income and expenditure of the relevant undertaking to be carried on by the applicant under the licence during the licence period, or such shorter period as the Authority may determine;
- (k) in the event of an application for the amendment of a licence condition, a motivation why the licence condition should be amended, deleted or substituted;
- (l) a copy of the advertisement referred to under by law 4; and

(m) such other particulars that the Authority may require in general or in the case of a particular type of or particular licence, or as may be required in terms of the Act or any regulations or bylaws made there under.

(3) The applicant may, when making the application, request the Authority to consider the application and any information contained to be dealt with in a confidential manner.

(4) The Authority is not obliged to deal with the information referred to in sub bylaw (3) on a confidential manner unless the applicant demonstrates to the satisfaction of the Authority that the rights of the applicant or any third party impacted by the application will be materially affected if the application or the identified information becomes public.

(5) Prior to formally considering an application, the Authority may discuss the submission of a license application with an applicant and request an applicant to -

(a) submit a draft application for preliminary scrutiny;

(b) submit to the Authority additional or complimentary information as the Authority may require in order to properly consider such application and rule thereon;

(c) re-consider its proposal and present alternative proposals in conformance with such terms as the Authority may direct.

(6) If the Authority finds the content of the draft application sufficient to commence the licensing procedure, the applicant shall send a final application to the Authority together with an advertisement as provided for in bylaw 4(3).

(7) In order to comply with its obligations to generate, transmit or distribute electricity, the applicant shall be required to conclude a power purchase agreement with the systems operator for approval by the Authority.

(8) The Authority shall have the oversight role in the negotiations of the power purchase agreement to ensure that the parties are placed at balanced positions and their logistical issues are honoured by either party during such negotiations.

**Advertising.**

4. (1) An applicant applying for the issuance, amendment, transfer or revocation of a licence shall submit proof of an advertisement of the application published for at least fourteen days before the submission of such application to the Authority.

(2) An advertisement referred to in sub bylaw (1) shall be published in at least two national newspaper circulating in Swaziland stating where the licensed activities will be performed and at least twice a week for two consecutive weeks.

(3) The advertisement shall-

(a) provide a brief summary of the activity to be performed, by whom it will be performed and over what period of time, or in the case of a cessation of activities, when the licensee will cease activities;

(b) specify that any interested person may provide comment on or object to issue of the licence to the Authority in writing within twenty eight days of first publication;

(c) specify the information required in terms of the Act and indicate clearly the physical address or website where such complete information will be inspected during normal business hours by any interested person.

(4) The application shall be submitted with a copy of the newspaper in which the application was advertised to the Authority as proof that such application has been advertised.

(5) The Authority may exempt an applicant from the requirement to advertise an application in terms of this bylaw on the following conditions-

(a) upon a written and fully motivated request by an applicant:

(b) where an amendment in the opinion of the Authority is of an administrative nature or does not materially affect the rights of third parties; or

(c) where the circumstances, in the opinion of the Authority, otherwise justify such exemption.

(6) The authority may specify any other method or medium of advertisement to be used by the applicant where it deems necessary for wider participation in its decision making process.

**Objections.**

5. (1) A person desiring to object to an application advertised in terms of bylaw 4 may, within fourteen (14) days from the date of the last publication of the advertisement, comment on or lodge a written objection against that application with the Authority.

(2) An objection shall include, at least the following information-

(a) the name, contact details, nationality and identity number of the person objecting, or, in the case of a body corporate, the country of registration and its registration number, or, in the case of an authority created by law, the name of such authority, as well as the postal and physical address of the person objecting;

(b) a copy of the newspaper editions in which the advertisement was placed;

(c) the nature of the interest entertained by the person objecting; and

(d) detailed substantiated reasons for the objections.

(3) The Authority shall provide the applicant to whose application the objection relates, with a complete copy of the objection within 7 (Seven) days of such objection being lodged with the Authority.

(4) The Authority shall afford the applicant at least 14 (Fourteen) days after receipt of an objection to respond to the Authority in writing.

(5) An objection shall not be submitted after the closing date.

(6) The Authority may upon good cause shown extend the period within which an objection may be lodged and extend the closing date accordingly.

*Consideration of licence applications.*

6. (1) The Authority shall consider an application for the issue, renewal, amendment, transfer or revocation of a licence within one hundred and twenty (120) days from the date of publication of an advertisement contemplated in bylaw 4.

(2) The Authority may hold public hearings at such venues and times as it considers appropriate to canvass the opinion of interested parties on the application.

(3) The Authority is not obliged to hold a public hearing where-

(a) it is of the opinion that any objections received are of a purely administrative nature or would not materially impact on the interests of any affected party; or

(b) it is satisfied that it will be able to properly decide on an application without holding a public hearing.

(4) The Authority shall, in deciding on an application and setting the conditions to a licence is subject -

(a) act in a manner that is transparent and fair, with due regard to the rights of the applicant to be heard;

(b) promote an efficient, reliable and economic system of electricity generation, transmission, supply and distribution within and importation into and export of electricity from Swaziland;

(c) issue licences and conditions to which licences are subject in a manner that maintains and improves efficiency, economy and reliability on the part of licensees so as to enable all reasonable demands for electricity to be met, in accordance with prevailing Government policy;

(d) have regard to the need of licensees to be able to finance the carrying out of their licensed activities;

(e) encourage efficiency, economy and safety in the use of electricity;

(f) regulate the quality of supply and service tariffs, fees and charges payable for electricity keeping in view both the interests of consumers and of licensees;

(g) have regard to promotion of health, safety and the environment;

(h) oversee the effectiveness of the mechanisms, processes and forces prevalent in the electricity sector to ensure that there is a reasonable balance between the demand for electricity and its supply; and

(i) act in a manner consistent with the provisions of the Act;

(5) The Authority is not obliged to approve may approve an application with or without conditions as it deems necessary in the circumstances and in so doing shall take into account the merits of any objections made to the grant of a licence in pursuance of an application.

(6) The Authority shall keep a written record of its proceedings and shall, in the event that an application is not approved or approved with conditions, provide reasons for reaching that decision at the request of the applicant.

*Issue of licence.*

7. (1) The Authority may issue, amend, transfer or revoke a licence subject to the conditions and provisions set out in sections 15 to 20 of the Act.

(2) A condition to which a licence is made subject shall be set out in the licence concerned and shall be complied with by a licensee.

(3) The Authority may, at any stage, amend the conditions of a licence whenever necessary to cater for developments that may occur in the course of the implementation of the project.

(4) The Authority is not obliged to issue a licence and may, if it deems it desirable for the electricity market model adopted at that point in time in Swaziland, issue only one licence per applicant for one or more of the activities licensed in terms of the Act.

(5) The Authority may issue separate or combined licences for any licensed activity or combination of activities.

(6) The Authority shall keep and maintain a register, in which the following shall be recorded in respect of every licence issued under the Act -

- (a) the name of every licensee;
- (b) the type of licence issued;
- (c) the area in respect of which the licence has been issued;
- (d) the conditions imposed on the licensee in terms of the licence, including the list of tariffs, rates or charges charged by the licensee at that point in time;
- (e) the liabilities and obligations of every licensee in relation to the payment of any fees in terms of this Act; and
- (f) other particulars as may be determined by the Authority.

(7) The register shall be open for inspection by any interested person at the place of business of the Authority during working hours.

*Amendment or revocation of licence or licence conditions.*

8. (1) The Authority may amend or revoke a licence or licence conditions-

- (a) on application by a licensee;
- (b) upon material non-compliance of the Act, the regulations, the bylaws or its licence or a condition of its licence by the licensee; or
- (c) if it is deemed necessary to further the purposes of the Act.

(2) The provisions of sections 17 and 19 of the Act shall apply with regard to the amendment or revocation of a licence or a licence condition upon non-compliance by a licensee.

*Exemption from obligation to hold a licence.*

9. (1) A generator who generates electricity with a plant of less than 100 (one hundred) kilowatt exclusively for own use shall not apply for or hold a licence, on condition that that person complies with the requirements set out in these bylaws.

(2) An owner or operator of an off-grid and mini-grid supply scheme exempted by the Minister shall not apply for or hold a licence.

(3) A generator who generates electricity with a plant of more than one hundred (100) kilowatt exclusively for own use shall apply for exemption to hold a licence in accordance with these bylaws.

(4) Any person other than a person contemplated or exempted in terms of sub-bylaws (1) to (3) who carries on the activities of generation, transmission, transmission system operation, distribution, supply or the import or export of electricity shall apply for and hold a licence.

*Application for exemption to hold licence.*

10. An application for exemption to hold a licence under section 8 (3) of the Act shall include -

- (a) the full names, physical and postal addresses of the person applying for exemption;
- (b) the fuel source of the generator;
- (c) the output of the generator;
- (d) the period for which electricity will be generated;
- (e) an undertaking that electricity generated will only be supplied for own use:
  - (f) an undertaking that all applicable health, safety and environmental standards regarding the construction, operation and maintenance of the generator and any associated transmission or distribution infrastructure will be complied with; and
  - (g) an undertaking that all applicable technical standards regarding the construction, operation and maintenance of the generator and any associated transmission or distribution infrastructure will be complied with approval of exemption.

11. (1) On receipt of a complete and satisfactory application in terms of bylaw 9, the Authority may grant the exemption on such conditions and for a period not exceeding twenty four months, as may be determined by the Authority.

(2) Exemption conditions for an applicant contemplated in section 8(3) of the Act may relate to -

- (a) ensuring that the generating plant is not used for the commercial production and sale of electricity, including co-generation;

- (b) the keeping of statistical data on fuel sources, fuel usage and electricity produced by the plant:
- (c) the connection of the generating plant to any transmission or distribution infrastructure:
- (d) the availability of and purchase of electricity by the owner of the generating plant in the event that the plant is not available for own generation purposes:
- (e) any other condition relevant to the construction, operation and use of the generating plant.

(3) The Authority is not be obliged to issue an exemption if -

- (a) the application is not complete:
- (b) the applicant has provided false or misleading information:
- (c) the Authority has reason to believe that the applicant will not abide by the conditions under which it was issued.

(4) An exemption granted in terms of this section may at any time be revoked by the Authority on transgression to any conditions to which the exemption is subject.

*General obligations for exempted persons.*

12. The holder of an exemption shall-

- (a) from time to time provide information as reasonably required by the Authority: and
- (b) at the request of any licensee, partake in such actions as may be necessary to facilitate co-ordination between the activities of the holder of that exemption and a licensee.

*Renewal of exemption.*

13. (1) The holder of an exemption may, prior to such exemption lapsing, apply for a renewal.

(2) An application for renewal for an exemption shall be done in the same manner as a new application for exemption.

*Application fee.*

14. An application for exemption shall be accompanied by the licence application fee imposed under the Licence Fee Regulations which fee shall be non-refundable.

**PART THREE**

**INFORMATION**

*Rendering of Information.*

15. (1) A person applying for a license shall submit all information that may be required in terms of that person's application to the Authority.

(2) In addition to any other information that may be required in an application for a licence, a licensee shall provide -

- (a) detailed audited annual financial statements consisting of a balance sheet, income statement and cash flow statement for each licensed activity;
- (b) the business plan and projections of the applicant for the forthcoming financial year;
- (c) an updated plan of generating plant, transmission networks, distribution networks and associated infrastructure, and proposed amendments or additions thereto; and
- (d) details of electricity suppliers or consumers, including total capacity and energy purchased or sold by supplier or consumer class.

(3) The information required in terms of sub-bylaw (2), shall be submitted annually within six months of a licensee's financial year end and information contemplated in sub-by law (2) (b), shall be supplied within one month of the approval of the business plan by the board of directors of that licensee.

#### PART FOUR

##### DISPUTES, INVESTIGATIONS AND NON-COMPLIANCE

###### *Mediation.*

16. (1) A request for the Authority to act as mediator in terms of section 40(2) of the Act shall be made in writing and shall set out the nature of the dispute between the parties.

(2) A person appointed in terms of section 40(3) of the Act shall-

- (a) be a person suitable to deal with the matter at hand with no conflict of interest in the matter; and
- (b) be appointed within ten (10) working days of receipt of the application for mediation.

(3) At the commencement of mediation, the appointed mediator shall-

- (a) inform the parties that the mediator does not have any conflict of interest;
- (b) inform the parties about the procedure and manner in which the mediation will be conducted;
- (c) inform the parties how the mediation fees shall be paid and to whom payments shall be made; and
- (d) secure agreement from the parties to the dispute with regard to paragraphs (a) to (c) before proceeding with the mediation.

###### *Arbitration.*

17. (1) A request for the Authority to act as arbitrator in terms of section 40 (1) of the Act shall be made in writing and shall set out the nature of the dispute between the parties.

(2) A person appointed in terms of section 40(3) of the Act shall-

- (a) be a suitable person with no conflict of interest in the matter; and
- (b) be appointed within ten working days of receipt of the application for arbitration.

*Arbitration process.*

18. (1) At the commencement of arbitration, the appointed arbitrator shall-

- (a) inform the parties that the arbitrator does not have any conflict of interest;
- (b) inform the parties about the procedure and manner in which the arbitration will be conducted;
- (c) inform the parties how the fees of the arbitration shall be paid and to whom payments shall be made; and
- (d) inform the parties that any award made will be final and binding.

(2) The claimant party initiating a dispute shall submit to the arbitrator and to the respondent party against whom the claim is made, a written statement containing the following information -

- (a) the name and address of the person who will represent the claimant at the proceedings;
- (b) a detailed description of the dispute; and
- (c) the relief or remedy sought and the amount claimed, if any.

(3) The respondent shall, after receipt of the statement referred to in sub bylaw (4), submit a written statement of defence to the arbitrator and the claimant before or on a date determined by the arbitrator.

(4) During the arbitration proceedings, any party may amend or supplement its claim, counterclaim or defence, unless the arbitrator considers it inappropriate to allow such amendment or supplement -

- (a) because of the party's delay in making it;
- (b) if it would be prejudicial to the other party; or
- (c) because of any other circumstances deemed relevant by the arbitrator.

(5) A party may not amend or supplement a claim or counterclaim if the amendment or supplement falls outside the scope of the agreement to arbitrate.

(6) A party to arbitration may be represented in arbitration.

(7) The names, addresses and telephone numbers of party representatives shall be communicated in writing to the other parties and to the arbitrator.

(8) A party or a representative may communicate in writing directly with the arbitrator as long as copies of such documents or communication is also provided to all the other parties to the dispute.

(9) The arbitrator shall conduct the arbitration in a manner that ensures that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(10) An arbitrator may proceed *ex parte* in a case where, despite being given reasonable notice a party neglects or refuses to attend without giving sufficient reason for non-attendance.

(11) Documents or information supplied to the arbitrator by one party shall at the same time be supplied by that party to all other parties.

(12) Each party shall have the burden of proving the facts relied on to support that party's claim or defence.

(13) At any time during the proceedings, the arbitrator may summon any person to testify before it or order parties to produce documents, exhibits or other evidence that the arbitrator deems necessary or appropriate.

(14) The arbitrator shall record or cause to be recorded oral evidence of any witness shall presented during the arbitration.

*Appointment of independent expert.*

19. (1) The arbitrator may appoint one (1) or more independent experts to report to it, in writing, on specific issues designated by the arbitrator and communicated to the parties.

(2) The parties shall provide an appointed expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require.

(3) Any dispute between a party and the appointed expert as to the relevance of the requested information or goods shall be referred to the arbitrator for decision.

(4) Upon receipt of an appointed expert's written report, the arbitrator shall send a copy of the report to all parties to the dispute and shall give the parties to the dispute an opportunity to express, in writing, their opinion on the report.

(5) A party may examine any document on which the appointed expert has relied on when drafting the report.

(6) At the request of a party, the arbitrator shall give the parties an opportunity to question the appointed expert at a hearing and to present expert witnesses to testify on the points at issue.

*Arbitration award.*

19. (1) An award by an arbitrator shall be made in writing and shall be final and binding on the parties and may be made an order of the Tribunal or other competent court, and the parties shall carry out such award without delay.

(2) The arbitrator shall make an award within two month after the last day of hearing the parties or collecting evidence.

(3) The arbitrator shall state the reasons for the award.

(4) An award may be made public only with the consent of the parties to the dispute, or as required by law.

(5) In addition to making a final award, the arbitrator may make interim, interlocutory, or partial orders and awards.

(6) The arbitrator shall, upon request of the parties, terminate the arbitration if the parties settle the dispute before an award is made on condition that the settlement is made an arbitration order.

(7) If in the opinion of the arbitrator, the continuation of the proceedings becomes unnecessary or impossible for any reason, the arbitrator shall inform the parties of its intention to terminate the proceedings and shall thereafter issue an order terminating the arbitration.

(8) Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by the arbitrator.

(9) The arbitrator shall keep confidential all matters relating to the arbitration or the award, unless otherwise agreed by the parties or required by applicable law.

(10) The arbitrator shall not be liable for any act or omission in connection with any arbitration conducted under these sections, except for the consequences of conscious and deliberate wrongdoing.

***Costs of mediation and arbitration.***

20. (1) The mediation and arbitration fees charged shall be-

(a) sufficient to recover all or part of the costs incurred by the Authority including, if applicable, the costs of a mediator or arbitrator, as the case may be; and

(b) paid by one or more of the parties to the dispute as is determined by the mediator or arbitrator, taking into account the circumstances of and parties to the dispute.

(2) The fees contemplated in the sub bylaw (1) shall be paid within thirty (30) calendar days of receipt of an invoice detailing the fees payable, unless the Authority determines otherwise.

(3) The authority, may at its discretion exempt a party from paying the mediation and arbitration costs.

***Tribunal.***

21. Nothing in these bylaws shall be read as to impact on the rights of a person to refer a dispute to the Tribunal in accordance with the Act, and a person is not obliged to follow a mediation or arbitration procedure prior to such referral.

***Complaints, enquiries and investigations.***

22. (1) The procedures used by a licensee for dealing with complaints relating to the provision of the licensed activities of such licensee, shall be approved by the Authority.

(2) Any person who, on demonstrable grounds believes that a licensee has contravened a provision in its licence, the Act or any regulations or bylaws made thereunder, may on the prescribed form lodge a formal complaint with the Authority.

(3) The Authority may in its own right or on receipt of a formal complaint in terms of sub-bylaw (2) if it is of the opinion that the complaint has merit, initiate an inquiry against a licensee or institute a formal investigation against such licensee if there is *prima facie* evidence of such transgression or non-compliance.

(4) The investigation shall be chaired by a person appointed by the Authority and as many persons as may be needed to assist the chairperson.

(5) The investigation shall be entitled to summon witnesses, hear evidence and conduct the investigation in a manner determined by the chairperson.

(6) On completion of the investigation the chairperson shall submit a written report and recommendations, including recommendations as to the suggested penalties or other sanctions to be imposed.

(7) On receipt of a report from the chairperson as contemplated in sub-bylaw (6) the Authority shall make a decision and may implement the recommendations with or without changes, with due regard to the provisions of section 19 of the Act.

*Non-compliance and rectification.*

23. (1) The Authority may, upon a licensee failing to comply with or transgressing a condition of its licence or a provision of the Act, serve on that licensee, a notice in writing to rectify the deficiency within 30 (thirty) days or such longer period as may be determined by the Authority.

(2) Upon the licensee not rectifying a deficiency within the period determined by the Authority, the Authority may -

- (a) impose a fine not exceeding 10 per cent of the turnover of that licensee or person;
- (b) if the transgression or failure to comply is material, in addition to or in the place of such monetary penalty -
  - (i) amend the licence;
  - (ii) revoke the licence; or
  - (iii) direct another licensee to meet the obligations of that licensee.

(3) A licensee may request the Authority to extend the period of rectifying the deficiency provided for in sub-bylaw (1), which permission shall not be refused, on condition that -

- (a) the Authority is convinced that the licensee is taking sufficient steps towards rectifying the transgression or non-compliance; and
- (b) the extension may only be provided for a maximum of 30 (thirty) days at a time.

(4) The Authority is not obliged to provide a period of rectification or may provide a shorter period of rectification in the event that the transgression or non-compliance of a licence condition or the Act is of a serious nature, or follows from an investigation contemplated in these bylaw.

**JABULILE MASHWAMA**  
*MINISTER FOR NATURAL RESOURCES AND ENERGY*