

THE ENERGY ACT, 2006

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AN ACT of Parliament to amend and consolidate the law relating to energy, to provide for the establishment, powers and functions of the Energy Regulatory Commission and the Rural Electrification Authority, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I ? PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Energy Act, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation.

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

"adulterated petroleum" means any mixture of refined petroleum products that alters product specifications detailed in the Kenya Standards;

"agent" means a person appointed in writing by the Commission to perform any of its functions;

"apparatus" means mechanical or electrical apparatus, and includes all vehicles, aircraft and vessels;

"area of supply" means the area within which the licensee is for the time being authorised to supply electrical energy;

"ancillary services" means services that are essential to the management of power system security, facilitate orderly trading in electricity and ensure that electricity supplies are of acceptable quality and, without limitation, may include

- (a) the provision of sufficient regulating capability to meet fluctuations in load occurring within a scheduling interval;
- (b) the provision of sufficient contingency capacity reserve to maintain power system frequency in the event of network or generation outages;
- (c) the provision of reactive power support to guard against power system failure through voltage collapse; and
- (d) the provision of black start capability to allow restoration of power system operation after a complete failure of the power system or part of the power system;

“Authority” means the Rural Electrification Authority established under section 66;

“biomass” means non-fossilised and biodegradable organic material originating from plants, animals and micro-organism and includes bio-ethanol, bio-diesel, biogas, charcoal, fuel-wood and agrowaste;

Cap. 265.

“building” has the meaning assigned to it under the Local Government Act;

“bulk supply” means the supply of electrical energy by a licensee to another licensee for the purpose of enabling the supply of electrical energy to consumers;

“Commission” means the Energy Regulatory Commission established under section 4;

“Commission Secretary” means a person appointed under section 13;

“Commissioner” means a person appointed under section 10;

Cap. 486.

“company” means a company within the meaning of the Companies Act;

“compulsory acquisition” of any land by a licensee means acquisition of that land, whether permanently or temporarily, through the agency of the Government or any other public body exercising statutory powers of acquisition or setting apart;

“conductor” means an electrical conductor connected or arranged to be electrically connected to a system;

“consumer” means any person supplied or entitled to be supplied with electrical energy or petroleum, but does not include a person supplied with electrical energy or petroleum for delivery or supply to another person;

“danger” means risk to the environment, health, life, person or property of anyone from shock, from fire or otherwise arising from the importation, exportation, generation, transmission, distribution, supply and use of electrical energy or from the importation, exportation, transportation, refining, storage and sale of petroleum, or from the production, storage, distribution and supply of any other form of energy;

“Director General” means the Director General appointed under section 12;

“distributing mains” means that portion of any electric supply line which is used or is intended to be used to give origin to service lines for the purpose of the general supply;

“distribution” means the ownership, operation, management or control of facilities for the movement or

delivery of electrical energy to enable supply to consumers;

“distribution licence”, means any document or instrument authorizing a person to distribute electrical energy in the manner described in such document or instrument in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;

"electrical plant" means any plant, equipment, apparatus or appliance used for, or for purposes connected with the importation, exportation, generation, transmission, distribution and supply of electricity, other than-

- (a) an electric supply line;
- (b) a meter; or
- (c) an electrical appliance under the control of a consumer;

“electric power producer” means a person who owns or operates facilities for generation of electrical energy pursuant to a generating licence issued under this Act;

“electric supply line” means any wire, conductor or other means used or intended to be used for the purpose of importing, exporting, generating, transmitting, distributing, supplying or using electrical energy, together with any casing, coating, covering, tube, pipe, insulator or support enclosing, surrounding or supporting the same or any part thereof, or any apparatus (including apparatus for switching, controlling, transforming, converting or otherwise regulating electric energy,) ancillary thereto, but does not include any telegraph or telephone line;

“electrical energy” means energy involving the use of electric current which may be produced either by mechanical, chemical, photovoltaic or any other means;

“electrical installation licence”, means a licence authorizing a person to carry out electrical installation work either individually or as a body corporate or incorporate for voluntary, business, training, or teaching purposes in the electrical installation works either for gain or reward or for no charge at all;

“electrical installation work” means the installation, alteration, or repair, wholly or partially, of any conductor or apparatus or system of wiring in or upon premises of an electricity consumer connected or intended to be connected to a supply of electricity where the voltage in any part exceeds 110 volts;

“energy” means any source of electrical, mechanical, hydraulic, pneumatic, chemical, nuclear, or thermal power for any use; and includes electricity, petroleum and other fossil fuels, geothermal steam, biomass and all its derivatives, municipal waste, solar, wind and tidal wave power;

“energy conservation” means the efficient, economic and cost effective production and use of energy;

Cap. 371. "exclusive economic zone" has the meaning assigned to it in section 2 of the Maritime Zones Act;

Cap 514. “factory” has the meaning assigned to it under the Factories Act.

“factory owner” includes a person responsible for the management of the factory.

“fossil fuels” means combustible or explosive

hydrocarbons formed from the remains of prehistoric animals or plants and includes petroleum, coal, schist, shale, peat, natural gas or any other bituminous substance;

“generating licence” means a licence authorising a person to generate electrical energy;

“generating station” means any station for generating electricity, including any buildings and plant used for the purpose, and the site thereof, but does not include any station for transforming (other than generator transformers), converting or distributing electrical energy;

“grid” means the network of transmission systems, distribution systems and connection points for the movement and supply of electrical energy from generating stations to consumers;

“installation” includes all material, wiring or apparatus situated upon any premises for use or intended for use in connection with the supply of electrical energy to such premises;

“Kenya Standard” means a specification or code of practice declared by the Council under section 9 of the Standards Act;

Cap. 496.

“large retail consumer” means a consumer that contracts for purchase of electrical energy for his own use, in excess of amounts that the Minister may from time to time prescribe by regulation upon recommendation by the Commission;

“licence” means any document or instrument in writing granted under this Act, to any person authorizing the importation, exportation, refining, storage and sale of petroleum or authorizing the importation, exportation, generation, transmission, distribution and supply of electrical energy, in the manner described in such document or

instrument

“licensee” means holder of a licence and excludes the holder of an electrical installation licence;

“linefill” means that quantity of petroleum constantly maintained in a pipeline;

"liquefied petroleum gas" means commercial propane, commercial butane, commercial pentane and mixture thereof as specified in the relevant Kenya standard;

Cap.265.

“Local Authority” means a local authority as defined in the Local Government Act;

“meter” means any and every kind of machine, device or instrument used for the measurement of the quantity of electrical energy, and includes such auxiliary appliances as resistors, shunts, reactances, current transformers, voltage transformers and time switches, external and necessary to the meter;

“minimum operational stocks” means the amounts of petroleum prescribed by the Minister in consultation with the Commission under section 96;

“Minister” means the minister for the time being responsible for energy;

"natural gas" means hydrocarbons that are in a gaseous phase at atmospheric conditions of temperature and pressure, including wet mineral gas, dry mineral gas, casing head gas and residue gas remaining after the extraction or separation of liquid hydrocarbons from wet gas, and non-hydrocarbon gas produced in association with liquid or gaseous hydrocarbons;

"off-specification petroleum" means petroleum whose

specifications do not conform to the relevant Kenya standards;

"oil spill" means spillage of petroleum of at least five hundred litres;

No. 3 of 2005.

“open tendering system” means a system of competitive bidding as provided for in Part V of the Public Procurement and Disposal Act, 2005;

“outer continental shelf” means the outer continental shelf as defined in Article 76 Paragraph 1 of the United Nations Convention on the Law of the Sea or all submerged lands seaward and outside the area of lands beneath navigable waters;

“permit” means an authorisation granted to a person to enable the carrying out of any activity in the energy business, where a licence is considered onerous;

“person” means any public or local authority, company, person or body of persons;

"petroleum" includes petroleum crude natural gas and any liquid or gas made from petroleum crude, natural gas, coal, schist, shale, peat or any other bituminous substance or from any product of petroleum crude, natural gas and includes condensate;

“petroleum business” means a concern carrying on the importation, refining, storage, transportation or sale of petroleum;

"pipeline" means a pipe or system of pipes that is used or to be used for the transportation of petroleum and any apparatus and works associated therewith, including –

(a) apparatus for inducing or facilitating the flow of

petroleum through the pipe or system of pipes;

- (b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of the pipe or system of pipes;
- (c) apparatus for supplying energy for the operation of any such apparatus as is mentioned in paragraph (a) or of such works as are mentioned in paragraph (b);
- (d) apparatus for the transmission of information for the operation of the pipe or system of pipes;
- (e) apparatus for affording cathodic protection to the pipe or system of pipes;
- (f) a structure for the exclusive support of a part of the pipe or system of pipes;

“power” means electrical power or the quantity of electrical energy per unit of time;

“premises” includes any land, land under water, building or structure;

“public authority” means the Government or any department or branch of the Government;

“public emergency” in relation to energy means a condition or situation, that in the reasonable opinion of the President does materially and adversely, or is likely to materially and adversely affect the provision of a continuous supply of energy to the country or to a significant part thereof, or which presents a physical threat to persons or property or security, integrity and reliability of one or more undertakings, and includes, without limitation, any of the following events

and circumstances to the extent that they satisfy the foregoing requirements—

- (a) any act of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemies, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
- (b) an act of God including but not limited to lighting, fire, earth quakes, volcanic activities, floods, severe drought, storms, cyclones, hurricanes, tsunamis, typhoons, tornadoes or any other natural disaster;
- (c) epidemics or plagues;
- (d) explosions or chemical contamination (other than resulting from an act of war);
- (e) labour disputes, including strikes, work to rule, go slow or lock outs;

“public lamp” means any electric lamp, which is under the control of a public or local authority, person or group of persons, used for the lighting of any street;

"refine" means to process petroleum crude in a refinery in order to yield petroleum products;

"refined petroleum products" means the products yielded from the refining of petroleum;

"refinery" means a distillation plant for refining of petroleum crude to yield petroleum products;

“renewable energy” means all non-fossil sources including, but not limited to biomass, geothermal, small hydro-power, solar, wind, sewage treatment and plant gas;

"retail dispensing site" means premises where petroleum is stored in bulk in one or more tanks and dispensed to consumers for their own use and includes filling and service stations;

"service line" means any portion of any electric supply line through which electrical energy is or is intended to be supplied by a licensee—

- (a) to a consumer either directly from the premises of the licensee, or from a distributing main; or
- (b) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main up to the point where such electric supply line reaches the supply terminals;

Cap. 496.

"specification" has the meaning assigned to it in section 2 of the Standards Act;

"storage depot" means premises consisting one or more tanks for storing petroleum or liquefied petroleum gas in transit or for sale;

"strategic stocks" means petroleum kept for purposes of ensuring security of supply;

"street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge, or causeway;

"sugar miller" means a person licensed to operate a sugar mill or a jaggery mill in Kenya for the production of sugar including refined sugar and other by-products;

“supply licence” means any document or instrument authorizing a person to supply electrical energy in the manner described in such document or instrument to any premises and such licence shall also entitle the licensee to receive a bulk supply from another licensee;

“supply terminals” means the ends of the electrical supply lines upon any consumer’s premises at which the supply of electrical energy is delivered from the service line of the licensee, and is situated–

- (a) in any case where the supply of electrical energy is measured by a meter, at the point at which the conductor from the service line enters the meter, or, in respect of a conductor from the service line which does not pass through the meter, the point on such conductor nearest to the meter;
- (b) in any other case, at the point at which the conductor from the service line enters the consumer’s main switch, or, if there is more than one main switch, that main switch on the consumer’s premises which is nearest to the source of supply;
- (c) in any case in which the supply of electrical energy is made to a public lamp, at the point of attachment to the distributing main of the electric supply line serving such public lamp;

“system” means an electrical system or grid in which all the conductors and apparatus are electrically connected to a common source of electrical energy;

“system operation” means performance of generation scheduling, commitment and dispatch, scheduling of transmission and ancillary services, and generation outage co-

ordination, transmission congestion management and co-ordination, and such other activities as may be required for the reliable and efficient operation of the grid;

“tariff” means a set of prices, rates, charges, and any cost associated with capacity, supply and delivery of electrical energy (which may vary by category of consumers, service voltage or time of use, and may include any adjustments or formulae therefor), as approved by the Commission pursuant to section 45;

“transmission” means the operation, management or control of facilities, consisting of high voltage electric supply lines for movement of electrical energy in bulk between generating stations and transmission substations for the purposes of enabling supply to consumers;

“transmission licence” means any document or instrument authorizing a person to transmit electrical energy in the manner described in such document or instrument, such licence may also entitle the licensee to carry out system operation of the grid;

“Tribunal” means the Energy Tribunal established under section 108;

“undertaking” means any business undertaken pursuant to a licence or a permit and includes all the assets and liabilities from time to time constituting or belonging or appertaining to such business, whether public or private, for-

- (a) the importation, exportation, generation, transmission, distribution and supply of electrical energy; or
- (b) the importation, exportation, manufacture, refining, transportation, storage or supply of fossil fuels; or

- (c) the production, storage, distribution or supply of any other form of energy;
- (d) but does not include an undertaking which the Commission in consultation with the Minister, by statutory instrument, declares not to constitute an undertaking for the purposes of this Act;

“use of electrical energy” means the conversion of electrical energy into chemical energy, mechanical energy, sound, heat or light, or the use or application of electrical energy to or for any of the purposes for which it may be or become or be found to be adapted;

“voltage” means the effective difference of electrical potential between any two conductors, or between a conductor and the earth, and is said to be—

- (a) low when it does not exceed 1,000 volts under normal conditions, subject however to the percentage variation allowed by any regulations made under this Act;
- (b) medium when it exceeds 1,000 volts but does not exceed 33,000 volts under normal conditions, subject however to the percentage variation allowed by any regulations made under this Act;
- (c) high when it normally exceeds 33,000 volts under normal conditions, subject however to the percentage variation allowed by any regulations made under this Act;

“works” means

- (a) electric supply lines, machinery, lands, buildings, structures, earth works and water works, and

includes any apparatus or things of whatsoever description, required for the importation, exportation, generation, transmission, distribution supply and use of electrical energy; or

- (b) pipelines, machinery, lands, buildings, structures, earth works and water works, and includes any apparatus or things of whatsoever description, required for the importation, exportation, storage, refining, transportation, dispensing and supply of petroleum; or
- (c) machinery, lands, buildings, structures, earth works and water works, and includes any apparatus or things of whatsoever description, required for the importation, exportation, storage, production, transportation, distribution and supply of any other energy form.

Application.

3. The provisions of this Act shall apply, as hereinafter specified, to every person or body of persons importing, exporting, generating, transmitting, distributing, supplying or using electrical energy; importing, exporting, transporting, refining, storing and selling petroleum or petroleum products; producing, transporting, distributing and supplying of any other form of energy, and to all works or apparatus for any or all of these purposes.

PART II ? ENERGY REGULATORY COMMISSION

Establishment of the Commission.

4. (1) There is established a Commission to be known as the Energy Regulatory Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all other things or acts for the furtherance of the provisions of the Act which may be lawfully done or performed by a body corporate.

(3) Except as otherwise provided in this Act, the Commission shall be independent in the performance of its functions and duties and exercise of its powers and shall not be subject to the direction or control of any person or authority.

Objects and
functions of the
Commission.

5. The objects and functions of the Commission shall be to—

- (a) regulate—
 - (i) importation, exportation, generation, transmission, distribution, supply and use of electrical energy;
 - (ii) importation, exportation, transportation, refining, storage and sale of petroleum and petroleum products;
 - (iii) production, distribution, supply and use of renewable and other forms of energy;
- (b) protect the interests of consumer, investor and other stakeholder interests.
- (c) maintain a list of accredited energy auditors as may be prescribed;

- (d) monitor, ensure implementation of, and the observance of the principles of fair competition in the energy sector, in coordination with other statutory authorities;
- (e) provide such information and statistics to the Minister as he may from time to time require; and
- (f) collect and maintain energy data;
- (g) prepare indicative national energy plan;
- (h) perform any other function that is incidental or consequential to its functions under this Act or any other written law.

Powers of the Commission.

6. The Commission shall have all powers necessary or expedient for the performance of its functions under this Act and in particular, the Commission shall have the power to-

- (a) issue, renew, modify, suspend or revoke licences and permits for all undertakings and activities in the energy sector;
- (b) make proposals to the Minister, of regulations which may be necessary or expedient for the regulation of the energy sector or for carrying out the objects and purposes of this Act;
- (c) formulate, enforce and review environmental, health, safety and quality standards for the energy sector, in coordination with other statutory authorities;
- (d) enforce and review regulations, codes and standards for the energy sector;

- (e) prescribe the form and manner in which any application for a licence or permit or amendment thereof or objection thereto shall be made and the fees payable in respect of any such application;
- (f) prescribe the form and manner in which any application for any authority, consent or approval under this Act shall be made;
- (g) prescribe the conditions which may be attached to the grant of licences or permits under this Act;
- (h) make and enforce directions to ensure compliance with conditions of licenses or permits issued under this Act;
- (i) set, review and adjust electric power tariffs and tariff structures, and investigate tariff charges, whether or not a specific application has been made for a tariff adjustment;
- (j) approve electric power purchase and network service contracts for all persons engaging in electric power undertakings;
- (k) examine and approve meters used or intended to be used for ascertaining the quantity of energy;
- (l) investigate complaints or disputes between parties with grievances over any matter required to be regulated under this Act;
- (m) prescribe the requirements for accreditation of persons with appropriate skills to check accuracy of energy meters installed in residential, commercial or industrial premises;

- (n) prescribe the manner and intervals of time within which the energy audit shall be conducted; and
- (o) impose sanctions and penalties on persons who are in breach of any of the provisions of this Act or any regulations made thereunder.
- (p) grant licences, in coordination with other statutory authorities, for sustainable charcoal production upon submission of satisfactory development plans.

Protection from personal liability.

7. No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent or any person acting by his directions personally liable to any action, claim or demand whatsoever.

Liability of Commission for damages.

8. The provisions of this Act shall not relieve the Commission of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

The common seal of the Commission.

9.(1) The common seal of the Commission shall be kept in the custody of the Commission Secretary and shall not be affixed to any instrument or document except as authorised by the Commission.

(2) All instruments or documents issued under the common seal of the Commission shall be authenticated under the hand of the Director General or any other member of the Commission authorised by the Commission.

(3) The common seal of the Commission, when affixed to a

document and duly authenticated, shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Commission under this section shall be presumed to have been duly given.

Commissioners.

10.(1) The management of the Commission shall vest in the Commissioners of the Commission which shall consist of -

- (a) a Chairperson who shall be appointed by the President;
- (b) the Permanent Secretary in the Ministry for the time being responsible for Energy or his representative;
- (c) the Director General;
- (d) five other commissioners appointed by the Minister to represent the private sector in general.

(2) A person shall be qualified for appointment as a Chairperson under subsection (1) (a) or commissioner under subsection (1) (d) if such person-

- (a) is a holder of a university degree recognised in Kenya in the fields of engineering, physical sciences, law, finance, economics or energy; and
- (b) has at least seven years working experience in the relevant field, five of which is at a senior management level.

(3) The Chairperson shall hold office for a term of four years and shall be eligible for reappointment for one further term of four years.

(4) The commissioners appointed under subsection (1) (d)

shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(5) The commissioners shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

Termination of appointment of commissioners.

11. The appointment of the Chairperson or a commissioner may be terminated, on the advice of the commission, by the President in the case of the Chairperson or by the Minister in the case of a commissioner, if the Chairperson or a commissioner-

- (a) is declared bankrupt;
- (b) is convicted of a criminal offence involving dishonesty, fraud or moral turpitude;
- (c) is absent from three consecutive meetings of the commission without reasonable cause to the satisfaction of the commission in consultation with the Minister; or
- (d) in any particular case fails to comply with the provisions of paragraph 6 of the First Schedule.

Appointment of the Director General.

12.(1) The Minister may, on the recommendation of the Commission, appoint a Director-General of the Commission who shall be the chief executive of the Commission and shall, subject to the directions of the Commission, be responsible for the day to day management of the Commission.

(2) The Minister may appoint the Director-General mentioned in sub-section (1) from a list of three names of persons submitted by the Commission provided that the Commission obtains the names through a competitive selection process.

(3) A person shall be qualified for appointment as a Director-General if such person—

- (a) is a holder of a recognised university degree in the fields of engineering, physical science, law, finance, economics, energy or a related field; and
- (b) has at least seven years working experience in the relevant field.

(4) The Director-General shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(5) The Director-General shall be an *ex-officio* member of the Commission but shall have no right to vote at any meetings of the Commission.

Appointment of a
Commission
Secretary.

13. (1) There shall be a Commission Secretary who shall be appointed on such terms and conditions as the Commission may determine.

(2) A person shall be qualified for appointment as a Commission Secretary if such person holds a university degree in law recognised in Kenya and is a registered certified public secretary with at least seven years relevant experience.

(3) The Commission Secretary shall—

- (a) be the secretary to the Commission;
- (b) record and keep minutes and other records of the Commission;
- (c) keep custody of the seal of the Commission; and

- (d) carry out such other functions as the Commission or the Director-General may, from time to time, assign.

(4) In the performance of his duties under this Act, the Commission Secretary shall be responsible to the Director-General.

Headquarters.

14. The headquarters of the Commission shall be in Kenya at a place gazetted by the Minister.

Appointment of directors, inspectors and other employees.

15.(1) Subject to subsection (2), the Commission may appoint such directors, inspectors, officers or other staff for the proper discharge of the functions of the Commission under this Act, on such terms and conditions of service as the Commission may determine.

(2) Notwithstanding subsection (1), a person shall qualify for appointment as a director if such person holds a recognized university degree in engineering, physical sciences, law, finance, economics or energy and has at least seven years relevant experience.

Remuneration of commissioners.

16. The Commission shall, in consultation with the Minister, pay its members such remuneration, fees or allowances for expenses as it may determine from time to time.

Delegation by the Commission..

17.(1) The Commission may, by resolution either generally or in any particular case, delegate to any committee of the Commission or to any member, officer, employee or agent of the Commission the exercise of any of the powers or the performance of any of the functions or duties of the Commission under this Act.

Conduct of business and affairs of the Commission.

18. The conduct and regulation of the business of the Commission shall be as provided in the First Schedule, but subject thereto, the Commission shall regulate its own

procedure and the procedure of any committee thereof.

Funds of the
Commission.

19.(1) The funds of the Commission shall consist of—

- (a) such levies as the Minister may impose on the sales of electricity, petroleum and other energy sources;
- (b) interest from bank deposits;
- (c) revenue from other sources including loans, grants, gifts or donations approved by the Minister; and
- (d) such moneys as may, from time to time, be appropriated by Parliament for that purpose.

(2) There shall be paid out of the funds of the Commission, all expenditure incurred by the Commission in the exercise of its powers or the performance of its functions under this Act.

Financial year.

20. The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.

21.(1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year and in particular, the estimates shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the

Commission;

- (b) the payment of pensions, gratuities and other charges in respect of the staff of the commission;
- (c) the proper maintenance of the buildings and grounds of the Commission;
- (d) the maintenance, repair and replacement of the equipment and other property of the Commission.

(3) The annual estimates shall be approved by the commission before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister's approval, the Commission shall not increase the annual estimates without the consent of the Minister.

Books of accounts, records, audit and reports.

22.(1) The Commission shall keep or cause to be kept proper books of accounts recording all the income and liabilities, expenditure assets, undertakings, funds, activities, contracts, transactions and any other business of the Commission.

(2) The Commission shall ensure that all moneys received are properly brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its assets and liabilities under this Act.

(3) Within a period of three months after the end of each financial year, the Commission shall submit to the Controller and Auditor-General or to an auditor appointed under subsection (4), the accounts of the Commission together with—

- (a) a statement of income and expenditure during that

year;

- (b) a balance sheet showing the assets and liabilities of the commission as of the end of the financial year.

(4) The accounts of the Commission shall be audited by the Controller and Auditor-General or by an auditor appointed by the Commission with the written approval of the Controller and Auditor-General.

(5) The appointment of an auditor shall not be terminated by the Commission without the prior written consent of the Controller and Auditor-General.

(6) The Controller and Auditor-General may give general or special directions to an auditor appointed under subsection (4) and the auditor shall comply with those directions.

(7) An auditor appointed under subsection (4) shall report directly to the Controller and Auditor-General on any matter relating to the directions given under subsection (6).

(8) Within a period of six months after the end of the financial year, the Controller and Auditor-General shall report on the examination and audit of the accounts of the Commission to the Commission and to the Minister, and in the case of an auditor appointed under subsection (4), the auditor shall transmit as copy of the report to the Controller and Auditor-General.

(9) Nothing in this Act shall be construed to prohibit the Controller and Auditor-General from carrying out an inspection of the Commission's accounts or records whenever it appears to him to be desirable and the Controller and Auditor-General shall carry out such an inspection at least once every six months.

(10) Notwithstanding anything in this Act, the Controller

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and Auditor-General may transmit to the Minister a special report on any matters incidental to his powers under this Act, and the provisions of the Public Audit Act, 2003 on the same issue shall apply *mutatis mutandis* to any report made under this section.

(11) The Minister shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him under this section.

(12) The fee for any auditor, not being a public officer, shall be determined and paid by the Commission.

(13) The Commission shall within three months after the close of each financial year prepare and submit to the Minister a report of its operations and activities throughout the year, in such form and detail as the Minister shall from time to time determine, and the Minister shall as soon as practicable after receiving the report cause it to be laid before the National Assembly.

Appointment of committees or agents.

23.(1) The Commission may appoint committees, or agents, as may be necessary or expedient for the better carrying out of the objects and purposes of this Act:

Provided that the agents are from the Local Authority or the Ministry of Trade.

(2) Every such committee or agent shall be appointed by the Commission in writing, setting out the duration of the appointment, the duties, reporting requirements, functions, authority and powers so conferred.

(3) Any instrument issued by the Commission under subsection (2) may be issued for a limited period or without limit of period, and may be varied or revoked by the Commission at any time.

(4) The Commission shall pay such allowances and fees to the members of such committees or such agents as the Commission may determine.

Powers of
committees or
agents.

24.(1) A committee or agent appointed under section 23 may, upon production of evidence of appointment to any person reasonably requiring it, for the purposes of this Act-

- (a) enter upon any premises at which any undertaking is carried out or an offence under this Act is or is suspected to have been committed;
- (b) inspect and test any process, installation, works or other operation which is or appears likely to be carried out in those premises;
- (c) be accompanied by a police officer(s) if there is a reason to believe that any serious obstruction may occur;
- (d) require from any person the production of any book, notice, record, list or other document which appears to him to have relevance to the inspection or inquiry, which is in the possession or custody or under the control of that person or of any other person on his behalf;
- (e) examine and copy any part of any book, notice, record, list or other document which appears to have relevance to the inspections or inquiry, and require any person to give an explanation of any entry therein, and take possession of any such book, notice, record, list or other document as he believes may afford evidence of an offence under this Act;

- (f) require information relevant to his inspection or inquiry from any person whom he has reasonable grounds to believe is or has been employed at any such premises or to have in his possession or custody or under his control any article referred to in this subsection; or
- (g) exercise such other powers as may be necessary in connection with the inspection or inquiry and other powers of his appointment under section 23.

(2) A committee or agent entering any premises under this section may be accompanied by such persons and may enter with such equipment as may be necessary.

(3) Where—

- (a) the premises to which this section relates are unoccupied; or
- (b) the owner, occupier or person in charge thereof is temporarily absent; or
- (c) entry thereon is refused or obstructed,

the committee or agent may use such force as is reasonably necessary to effect entry:

Provided that in the case of an entry under paragraph (a) or (b) —

- (i) reasonable steps shall be taken prior to entry by the committee or agent to find the owner, occupier or person in charge of the premises to be entered; and

- (ii) the premises shall be left by the committee or agent as effectively secured against trespassers as they were found.

(4) A person who resists, hinders or obstructs any committee or agent acting in the course of his duty under this section or who wilfully fails to comply with any requirements lawfully made thereunder commits an offence and shall, on conviction, be liable to a fine not exceeding twenty five thousand shillings for each day or part thereof that the obstruction occurs.

Decisions of the Commission.

25.(1) Decisions of the Commission shall be in writing and the order so given and reasons thereof shall be served upon all parties to the proceedings, and published in the *Gazette*.

(2) All orders of the Commission shall become effective on the date of entry thereof, and shall be complied with within the time prescribed therein.

Appeal against a decision of the Commission.

26. A person aggrieved by a decision of the Commission may appeal to the Tribunal within thirty days of the decision:

Provided that the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.

PART III ? ELECTRICAL ENERGY

Licensing

Requirements for a licence or permit.

27. (1) Subject to the provisions of this Act, a licence or licences as the case may be, shall be required for the—

- (a) generation, importation or exportation, transmission or distribution of electrical energy;

or

(b) supply of electrical energy to consumers:

Provided that for undertakings involving a capacity not exceeding 3,000 kW, the provisions of subsections (2), (3) and (4) shall apply.

(2) A Permit shall be required in respect of all undertakings—

- (a) intended for the supply of electrical energy to other persons or consumers; and
- (b) with a generating plant of over 1000 kW intended for own use.

(3) Any undertaking operating pursuant to a permit granted under this Act shall—

- (a) in any case where conveyance of electrical energy to or from any transmission or distribution network is possible, meet the minimum requirements of the owner or operator of the transmission or distribution network as approved by the Commission, and the owner or operator of any such undertaking shall inform the network owner or operator of all connected load and generation equipment that might have material effect on the network; and
- (b) be subject to such conditions as may be specified by the Commission.

(4) A permit shall not be required in the case of installations with a generating plant of a capacity not exceeding 1000 kW and connected within the premises of any

person in such a manner that conveyance of electrical energy to a transmission system or a distribution system cannot occur.

(5) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to—

- (a) in the case of contravention of subsection (1) a fine not exceeding two million shillings, or to a maximum term of imprisonment of two years, or to both; and
- (b) in the case of contravention of subsections (2), (3) and (4), a fine not exceeding one million shillings, or to a maximum term of imprisonment of one year, or to both.

Application for a licence or permit.

28.(1) An application for a licence or permit, (including an application for amendment, transfer or renewal), shall be made to the Commission in the form and manner prescribed by regulations made by the Minister under this Act.

(2) Before making any application for a licence, the intending applicant shall give fifteen days notice, by public advertisement, in at least two national and one regional newspaper of wide circulation and within the time specified for its publication of the intended application.

(3) In addition to the notice required under subsection (2), the intending applicant shall serve a notice in writing with the particulars of the application on every local authority in the area or proposed area of supply and in any other area concerned in the application, but, where the intending applicant is a local authority and the application to be made relates to an area in the jurisdiction of the intending applicant, the provision as to notice to the local authority shall not apply.

(4) Every notice under subsection (2) or (3) shall state

that any person or body of persons desirous of making any representation on or objection to the application or to the grant of the licence shall do so by letter addressed to the Commission and marked on the outside of the cover enclosing it “Electric Power Licence Objection”, on or before the expiration of thirty days from the date of the application as stated in the notice and that a copy of such representation or objection shall be forwarded to the applicant.

(5) The Commission shall, within fifteen days after receipt of the application, inform the applicant in writing whether the application is complete.

(6) The Commission may hear any objections in public, at a time and place of which not less than fifteen days notice shall be given to the applicant and to every objector and the Commission shall make known its decision regarding any objection within thirty days after the hearing.

Commission may invite applications for a licence or permit.

29. The Commission may, through a fair, open and competitive process in accordance with procedures prescribed by the Minister by regulations, invite applications for a licence or permit under this Act.

Factors to be considered in an application.

30.(1) The Commission shall, in granting or rejecting an application for a licence or permit, take into consideration—

- (a) the impact of the undertaking on the social, cultural or recreational life of the community;
- (b) the need to protect the environment and to conserve the natural resources in accordance with the Environmental Management and Coordination Act of 1999;
- (c) land use or the location of the undertaking;
- (d) economic and financial benefits to the country or

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area of supply of the undertaking;

- (e) the economic and energy policies in place from time to time;
- (f) the cost of the undertaking and financing arrangements;
- (g) the ability of the applicant to operate in a manner designed to protect the health and safety of users of the service for which the licence or permit is required and other members of the public who would be affected by the undertaking;
- (h) the technical and financial capacity of the applicant to render the service for which the licence or permit is required;
- (i) any representations or objections made under sub-section (4) of section 28;
- (j) the proposed tariff offered; and
- (k) any other matter that the Commission may consider likely to have a bearing on the undertaking.

(2) The Commission shall process all applications for a licence or permit within ninety days after the Commission confirms to the applicant, in writing, that the application is complete.

(3) The Commission shall, where it refuses to grant a licence or permit, give the applicant a statement of its reasons for the refusal within thirty days of the refusal.

Form and conditions
of a licence or

31.(1) Every licence or permit shall be in such form as the

permit.

Commission may determine and shall, subject to subsection (2), contain such particulars or conditions where applicable-

- (a) the provisions for tariffs or charges for the importation, exportation, generation, transmission, distribution and supply of electrical energy to different classes of consumers;
- (b) the duration of the licence or permit;
- (c) the maximum capacity of supply of the undertaking;
- (d) the area of supply of the undertaking; and
- (e) any other matter connected with the carrying on of the undertaking.

(2) All licences or permits issued by the Commission shall include the following conditions-

- (a) a requirement that the licensee or permit holder shall comply with all applicable environmental, health and safety laws;
- (b) a stipulation that the licensee or permit holder is subject to liability under tort and the contract laws ; and
- (c) a requirement that all necessary fees associated with the licence or permit shall be paid on a timely basis.

(3) A licence or permit issued under this Act may not be altered, revised or modified, except with the consent of the holder;

Licensee and a permit holder to

32. (1) A licensee or permit holder who is a network

provide access.

service provider shall provide access to all existing and potential network users of that part of the grid owned or operated by him upon–

- (a) payment of such fees and other charges for network services; and
- (b) compliance with such minimum requirements of the network service provider,

as may be approved by the Commission.

(2) A licensee or permit holder shall provide the Commission with such information as the Commission may prescribe to enable the Commission approve the fees, charges and requirements under subsection (1).

(3) In this section–

“network service” means a transmission service or distribution service associated with the conveyance and controlling the conveyance, of electrical energy through the network;

“network service provider” means a person who engages in the activity of owning, controlling, or operating a transmission or distribution system pursuant to a licence or permit granted under this Act;

“network user” means a person licensed under this Act to generate, transmit, distribute or supply electrical energy or a large retail consumer.

Licensee or permit holder not to purchase other undertakings.

33.(1) A licensee or permit holder shall not purchase or acquire any undertaking or associate himself with any public or local authority, company, person or body of persons supplying electrical energy under any licence, except with the

authority of the Commission.

(2) A licensee or permit holder who contravenes the provision of subsection (1) shall be liable to the revocation of his licence or permit, in addition to such other action as the Commission may deem fit.

Transfer of licence
or permit.

34.(1) A licensee or permit holder shall not transfer or otherwise divest any rights, powers or obligations conferred or imposed upon him by the licence without the consent of the Commission.

(2) The Commission may, on application by any of the following persons, transfer a licence or permit—

- (a) in the case of the death of the licensee or permit holder, to the legal representative of such licensee or permit holder;
- (b) in the case of the bankruptcy of the licensee or permit holder or assignment for the benefit of his creditors generally, to the lawfully appointed trustee or assignee;
- (c) in the case of a corporation in liquidation, to the lawfully appointed liquidator;
- (d) in any case where the licensee or permit holder becomes subject to a legal disability, to any person lawfully appointed to administer his affairs; or
- (e) in the case of voluntary transfer of the undertaking, to the new owner of the undertaking,

and a licence or permit so transferred shall, notwithstanding any

other provision of this Act, continue to retain an expiry date similar to the one existing in the licence or permit before the transfer.

(3) The Commission shall satisfy itself of the legal, technical and financial competence of the transferee to carry out the undertaking.

(4) The transferee shall undertake in writing to comply with the licence or permit conditions.

(5) The Commission shall not withhold any consent to any application to transfer unless it has reason to believe that public interest is likely to be prejudiced by the transfer.

(6) In this section—

“transfer of licence or permit” includes the acquisition of a controlling interest directly or indirectly in the licence holder or permit holder; and

“controlling interest” as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that person, whether through the ownership of shares, voting, securities, partnerships or other ownership interests, agreements or otherwise.

Failure of licensee or permit holder to meet obligations.

35.(1) If a licensee or permit holder fails to meet his obligations under this Act, the Commission shall serve upon him a notice in writing to meet those obligations within fourteen days or such longer period but not exceeding sixty days as the Commission may determine.

(2) Subject to subsection (3), if a licensee or permit holder fail to comply with the requirements of the notice, the Minister may, on the recommendation of the Commission,

enter upon and take possession of the undertaking of the licensee or permit holder and operate the undertaking for and on account of the licensee or permit holder and at the risk and expense of the licensee or permit holder, remitting the balance, if any, of the net income derived from the undertaking to the licensee or permit holder.

(3) Notwithstanding subsection (2), the Commission may, at any time, revoke the licence or permit of a licensee who contravenes subsection (1).

(4) For the purposes of subsection (2)–

- (a) the entry and taking of possession by the Minister shall not prejudice the security of any debenture-holder or mortgagee of his right of enforcing such security;
- (b) the Minister shall only restore possession of the undertaking at such time when the Minister, in consultation with the Commission, is satisfied that the circumstances on account of which the entry was made no longer exist or will no longer hinder the proper functioning of the undertaking and that the licensee or permit holder has satisfied his obligations under this Act and the conditions of his licence or permit.

(5) The application of subsection (2) or (3) shall not prejudice any claims which any consumer or other person may have against the licensee or permit holder arising from his failure to fulfil his obligations in terms of the conditions of his licence.

(6) A person obstructing or causing obstruction to the Minister or any person authorised by him in the execution of the duties under this section, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred

thousand shillings for each day or part thereof during which the offence continues.

Suspension or
revocation of
licence or permit.

36.(1) The Commission may suspend or revoke a licence or permit where—

- (a) the undertaking or the execution of the works related thereto has not commenced at the expiry of twenty-four months from the date on which the licence or permit was granted, or at the expiry of any extended period which the Commission may allow;
- (b) it is satisfied that the licence or permit holder is either wilfully or negligently not operating in accordance with the terms and conditions of the licence or permit, or the provisions of this Act or any regulations thereunder;
- (c) the licensee or permit holder is adjudged bankrupt; or
- (d) the licensee or permit holder, at any time after commencement of the licence or permit, makes representation to the Commission that the undertaking cannot be carried on with profit, and ought to be abandoned, and, upon inquiry the Commission is satisfied that the representation is true.

(2) Before suspending or revoking a licence or permit under this section, the Commission shall give a licensee or permit holder forty five days notice to show cause why the licence or permit should not be revoked.

(3) A notice under subsection (2) shall—

- (a) set out the relevant condition of the licence or

permit, or the requirement of the Act to which the breach is related;

- (b) specify the acts, omissions or other facts which, in the opinion of the Commission, constitute a contravention of the conditions or the Act, and the reasons why the Commission is of the opinion that any of the circumstances mentioned under subsection (1) have occurred or arisen; and
- (c) be served at the principal office of the licensee or permit holder and shall take effect from the date of service.

(4) The Commission shall determine the matter within ninety days from the expiry of the notice.

(5) Where a licence or permit is suspended or revoked, the Commission shall, in consultation with the Minister, take such action as is necessary to ensure that the supply of electrical energy to consumers is not unduly interrupted as a result of the revocation:

Provided that the revocation and suspension of licences and permits is not in contravention of any written law.

(6) A suspension or revocation of a licence or permit under this section shall not indemnify the holder against any penalties for which such person may have become liable under the Act.

Provisions where
Commission
suspends or revokes
licence.

37.(1) Where the suspension or revocation of a licence under this Act is likely to interrupt or affect the importation, exportation, generation, transmission, distribution or supply of electricity to the consumers, the Minister may, after due consultation with the owners of the undertaking declare that the undertaking shall continue;

(2) Where, under subsection (1) the Minister declares that an undertaking shall continue, the owners shall, within a reasonable time, sell and transfer the undertaking to other persons who have the technical, economic, financial and organizational capabilities to operate the undertaking:

Provided that the transfer amount shall be as agreed by the owners and the purchasers.

(3) If the owner of the undertaking declines to sell and transfer the undertaking in accordance with the order of the Minister given under subsection (1), the Minister may appoint an independent valuer who shall value the undertaking and submit his valuation report to the Minister.

(4) The Minister may, after receiving the report in accordance with subsection (3) proceed to sell the undertaking within a period of ninety days through an open tendering system, subject to the reserve price as may be determined by the valuer.

(5) All proceeds of the sale of the undertaking under subsection (4) shall be remitted to the owner minus any reasonable costs incurred by the Minister or his authorised representative in effecting the sale.

(6) The provisions of subsection (1) shall not prejudice the rights and interest of any debenture holder or secured creditors of the owner of the undertaking.

(7) In the event that after the ninety day period is over, no bidder meets the minimum requirements of the tender, the Minister may appoint a competent person to operate the undertaking until such time that a suitable buyer is found.

(8) A person who, without lawful or justifiable cause,

obstructs the Minister or any person authorised by him in the carrying out of the sale or in operating the undertaking, authorised by this section, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs or continues.

(9) A person aggrieved by the order of the Minister or who disputes the value of the undertaking may refer the matter for determination through arbitration within sixty days of receipt of the Minister's order or the report of the valuers.

Electrical
installation work.

38.(1) A person shall not carry out any electrical installation work unless the person is licensed by the Commission as an electrician or an electrical contractor.

(2) To be licensed by the Commission as an electrical contractor a person must—

- (a) be a licensed electrician registered under the Institute of Engineers of Kenya; or
- (b) have in his employment, a licensed electrician.

(3) A person who desires to be licensed as an electrician or an electrical contractor shall make an application in the form and manner prescribed by the Commission.

(4) The Commission shall process all applications contemplated under subsection (3) expeditiously and in any case, not later than ninety days from the date of the application, and it may—

- (a) grant the licence or registration applied for accordingly, either without conditions or subject to such conditions as it may deem fit, or
- (b) refuse to grant the licence or registration applied

for, giving reasons thereof.

(5) A person who contravenes any of the foregoing provisions commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to maximum term of imprisonment of one year, or to both.

Replacement of a licence or permit.

39.(1) Where, upon application, it is shown to the satisfaction of the Commission that a licence or permit has been lost, destroyed or defaced, the Commission shall issue a duplicate licence or permit.

(2) There shall be payable, upon replacement of a licence or permit under subsection (1), such fees as the Minister may, from time to time by regulations, prescribe.

Keeping of register of licences, permits and approvals.

40.(1) The Commission shall maintain a register, in such form as it may determine, in which it shall enter the provisions, subject to subsection (2), of—

- (a) every licence, permit or approval granted;
- (b) every modification or revocation of such licence, permit or approval;
- (c) every direction or consent given or determination made with respect to such licence, permit or approval;
- (d) every order or revocation of such order and every notice, as appropriate; and
- (e) such other information as the Commission may deem necessary.

(2) In entering any provision in the register, the Commission shall have regard to the need for excluding, so far as is practicable—

- (a) any matter which relates to the affairs of any person, where publication of that matter would or might, in the opinion of the Commission, be prejudicial to the interests of that person; and
- (b) any matter that would appear to the Commission to be against the public interest or the commercial interests of any person.

(3) The contents of the register shall be available for inspection by the public, during such hours and subject to the payment of such fee as may be prescribed by the Commission.

(4) A person may, on the payment of such fee as may be prescribed, require the Commission to supply him with a copy of, or extract of, any part of the register, being a copy or extract which is certified by the Commission to be a true copy or extract.

Accounts, records
and reports of
licensee.

41. (1) For the purposes of this Act, where a person holds a licence or licences, the accounts of each undertaking under each licence shall, unless specifically exempted by the Commission, be subject to the provisions of this Act, and be kept separate and distinct and in the manner and form prescribed by the Commission:

Provided that—

- (a) the Commission may direct that the operations of a licensee holding more than one licence in respect of separate or contiguous areas of supply may be treated as a single undertaking for the purposes of this section;
- (b) a licensee holding two or more licences, the operations under which are not to be treated as a

single undertaking under paragraph (a), or conducting any business or operations independent of his licence or licences, shall be required nevertheless to keep in the prescribed form additional or alternative sets of accounts, to be termed the Head Office Accounts, in respect of all such items as, in the opinion of the auditor appointed under subsection (2), cannot properly or reasonably be attributed or allocated to, and included in, the accounts of the undertaking of any one of such licences exclusively.

(2) A licensee shall, at his own cost, cause the annual accounts to be examined and audited by independent auditors and submit the audited accounts to the Commission within three months after the end of each financial year.

(3) A licensee shall, at the request of the Commission and at his own cost, provide all available information about the technical, financial, hydrological or environmental issues and any other relevant information relating to the operations of the licensee.

(4) The Commission may exempt a licensee from the requirements of subsection (1) where—

- (a) it is satisfied with the form and manner in which the records and accounts of the licensee are kept and audited; or
- (b) such exemption is provided for in the licence.

Powers of the Commission to enter, inspect and investigate.

42.(1) The Commission or any person authorized by the Commission in writing may—

- (a) at all reasonable times, enter upon the premises of a licence or permit holder and inspect or

investigate any plant, machinery, books, accounts and other documents found thereat and take copies thereof;

- (b) require a licence or permit holder to furnish to the Commission, books, accounts, records and other documents in such form as the Commission may demand.

(2) The Commission may require that the accuracy of any documents or particulars be verified.

(3) A person authorized by the Commission under subsection (1), shall produce proof of such authorization at the request of any person affected by his activities.

(4) A person who refuses to allow an inspection under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs or continues.

(5) A person who discloses information obtained upon an inspection or investigation under this section, other than—

- (a) information in the public domain for the purposes of carrying out his duties under this Act; or
- (b) upon the order of or in answer to questions put to him as a witness in a court of law or at a hearing before the Commission under this Act;

commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to a maximum term of imprisonment of six months, or to both.

Supply of Electrical Energy

Contracts for bulk supply of electrical energy.

43. (1) All contracts for the sale of electrical energy, transmission or distribution services, between and among licensees, and between licensees and large retail consumers shall be submitted to the Commission for approval before execution.

(2) An application for approval of a contract under subsection (1) shall be in such form and submitted to the Commission in such manner, as the Minister may, in regulations prescribe.

(3) In considering a contract under subsection (1), the Commission shall—

- (a) ensure that the rates or tariffs established in the contract are just and reasonable;
- (b) satisfy itself that the application meets the minimum requirements as prescribed by the Minister in the regulations under this Act; and
- (c) take into account any other issues which may have a bearing on the operations of the undertakings.

(4) In this section, a just and reasonable tariff shall mean a rate that enables a licensee to, *inter alia*—

- (a) maintain its financial integrity;
- (b) attract capital;
- (c) operate efficiently; and
- (d) fully compensate investors for the risks assumed.

Forms of contract

44.(1) Every person licensed to supply electrical energy

for supply of electrical energy to consumers.

shall use a form of contract approved by the Commission for such supply which shall set out the rights and responsibilities of the licensee and consumers.

(2) In approving a form of contract under subsection (1), the Commission shall satisfy itself that such form of contract has fair and reasonable provisions dealing with issues, including but not limited to—

- (a) limitation of liability of the licensee;
- (b) disconnection procedures;
- (c) account and meter deposits;
- (d) consultation and notice of changes to any of the contract terms;
- (e) metering; and
- (f) complaint handling and dispute resolution.

Tariffs and tariff structures and terms of supply.

45.(1) The tariff structure and terms for the supply of electrical energy shall be in accordance with principles prescribed by the Commission.

(2) All tariffs charged for electrical energy supplied shall be just and reasonable.

(3) Any application for the review of tariffs shall be filed with the Commission for approval not later than forty-five days before the proposed effective date:

Provided that the Commission may, at its discretion, suspend a schedule of tariffs increase for up to five months.

(4) An application under subsection (3) shall be in the

form prescribed by the Commission.

(5) A licensee may require a consumer to make such account deposit, commensurate with the consumer's estimated electrical energy consumption, before electrical energy is supplied to him, which deposit may, from time to time, be revised by the licensee in order to take account of both the level of consumption and of any changes in electrical energy tariffs.

(6) The charges for electrical energy to be supplied may, subject to agreement between the parties, be paid in advance.

Permission to survey and use land to lay electric supply lines.

46. (1) No person shall enter upon any land, other than his own—

- (a) to lay or connect an electric supply line; or
- (b) to carry out a survey of the land for the purposes of paragraph (a),

except with the prior permission of the owner of such land.

(2) The permission sought in subsection (1) shall be done by way of notice which shall be accompanied by a statement of particulars of entry.

Assent to proposal.

47.(1) An owner, after receipt of the notice and statement of particulars under section 46, may assent in writing to the construction of the electric supply line upon being paid such compensation as may be agreed and any assent so given shall be binding on all parties having an interest in the land, subject to the following provisions—

- (a) that any compensation to be paid by the licensee giving notice to the owner, in cases where the owner is under incapacity or has no power to assent to the application except under this Act,

shall be paid to the legal representative of the owner;

- (b) that an occupier or person other than the owner interested in the land shall be entitled to compensation for any loss or damage he may sustain by the construction of the electric supply line, so long as the claim is made within three months after the construction of the electric supply line.

(2) No assent expressed in writing in accordance with subsection (1) shall be void by reason only of non-compliance with any statutory requirements as to registration.

Objection to proposal.

48.(1) An owner shall be deemed to have assented to a proposal to construct an electric supply line on his land if he fails to notify, in writing, the person desiring to construct an electric supply line, of his objection thereto within sixty days after the service on him of the notice required by section 46 and in the event of an objection, the Commission, on application by the licensee, shall determine—

- (a) what loss or damage, if any the proposed electric supply line will cause to the owner, or to the occupier or other person interested in the land;
- (b) whether any loss or damage that may be caused is capable of being fully compensated for by money.

(2) The result of a determination under sub-section (1) shall be as follows—

- (a) if the Commission determines that loss or damage will be caused to the owner, occupier or other party interested in the land and that the loss

or damage is—

- (i) of a nature that may be fully compensated for by money, the Commission shall proceed to assess the compensation and to apportion it amongst the owner, occupier and other parties who may in the judgement of the Commission be entitled to compensation and on payment of the sum so assessed the person giving notice may proceed to construct or lay the proposed electric supply line;
 - (ii) not of a nature that may be fully compensated for by money the person giving notice shall not be entitled to construct or lay the proposed electric supply line;
- (b) if the Commission determines that no loss or damage will be caused to the owner, occupier or other party interested in the land the person giving notice may forthwith proceed to construct or lay the electric supply line.

Procedure before
Commission.

49.(1) Where an application is made under section 48, the Commission may summon the parties to appear before it at a time and place to be named in the summons and upon the appearance of the parties or in the absence of any of the parties, upon proof of due service of the summons, the Commission may hear and determine the question and amount of compensation and for that purpose may examine the parties and their witnesses on oath.

(2) The costs of the inquiry pursuant to subsection (1) shall be determined by the Commission.

Payment of
compensation by the

50.(1) If any difficulty or question arises as to the

Commission.

person entitled to compensation payable under this Act, the Commission shall order compensation to be paid to the Commission pending the making of an application under subsection (2).

(2) Upon an application by a person making claim to any compensation paid to the Commission under subsection (1), the Commission may at the cost of the person making the application give notice to such persons as it deems fit in accordance with sections 46 and 48 and after such notice the Commission shall direct or order distribution and payment of the compensation according to the respective rights and interests of the persons making claim to such compensation or any part thereof, and may further make such other orders in the premises as it deems fit.

Power of the licensee to enter land to inspect or repair lines.

51.(1) After electric supply lines have been laid in accordance with this Act, the licensee or any person authorized by the licensee may, from time to time as it becomes necessary, enter the land on which the electric supply lines are laid, with such assistance as may be necessary, for the purpose of inspecting or repairing the lines, or removing such lines in case where the electric supply lines are no longer required.

(2) Where electric supply lines are removed, the surface of the land shall forthwith be restored to its former condition as far as possible and in default thereof restoration may be carried out by the owner of the land, and the costs thereof shall be recoverable from the licensee.

Liability of licensee to make compensation for damage.

52. The provisions of this Act shall not relieve a licensee of the liability to make compensation to the owner or occupier of any land or the agents, workmen or servants of the owner or occupier of any land which is the subject of the provisions of this Act, for damage or loss caused by the exercise or use of any power or authority conferred by this Act or by any irregularity, trespass or other wrongful proceeding in the execution of this

Act, or by the loss or damage or breaking of any electric supply line, or by reason of any defect in any electric supply line.

Laying of electric supply lines along roads, railways, etc.

53.(1) For the purpose of the conveyance, transmission, or supply of electrical energy, a licensee may erect, fix, install or lay any poles, wires, electric supply lines, power or other apparatus in, upon, under, over or across any public streets, road, railways, tramways, rivers, canals, harbours or Government property, in the manner and on the conditions as provided in this Act.

(2) Notwithstanding the provisions of any other written law, but subject to the provisions of this section, a licensee may break up any street within his area of supply, and may erect posts and lay or construct power lines or electric supply lines along, under or over any such street, and may, from time to time, repair, alter or remove any posts or lines so erected, laid or constructed:

Provided that the person having the control of such street shall have a prior right to break up and repair such street with reasonable despatch upon payment to him of a reasonable charge by the licensee.

(3) A licensee shall, not less than thirty days before exercising any power conferred upon him by this section, give notice in writing to the owner of his intention to do so, except in a case of emergency and in such case the licensee shall notify the owner as soon as possible after the emergency has arisen.

(4) The powers conferred upon a licensee by this section shall, except in a case of emergency, be exercised only under the superintendence of the person concerned and according to a plan showing the route and in terms of specifications approved by that person, or, if any dispute arises in respect of such plan, route or specifications, as may be approved by the Commission:

Provided that if the said person fails to exercise the

powers of superintendence conferred by this section the licensee may, after giving notice, exercise those powers without such superintendence.

(5) Whenever a licensee carries out any work authorized by this section, he shall comply with the by-laws, if any, of the local authority concerned and shall complete that work with reasonable despatch and reinstate the street broken up and remove any debris or rubbish occasioned thereby and shall, while the street is broken up or obstructed, cause the works to be, at all times, fenced and guarded and during the night, adequately lit.

(6) If the licensee fails or unreasonably delays in carrying out the work referred to in subsection (5), the local authority concerned may cause the work to be executed at the expense of the said licensee.

(7) A licensee shall pay to the said local authority the costs reasonably and necessarily incurred by it in executing such work.

(8) Nothing in this section shall be construed as relieving a licensee of any liability in respect of any loss or damage caused by his negligence in carrying out such work or by his failure to comply with the provisions of this section.

Compulsory
acquisition of land.

54.(1) Where a licensee requires the compulsory acquisition of land for any of the purposes of a licence, the licensee may apply to the Minister to acquire the land on his behalf.

(2) Where the Minister in consultation with the Commission is satisfied that it is in the public interest to do so, he may acquire the land in accordance with the relevant laws.

(3) Where land is acquired on behalf of the licensee under subsection (2), the licensee shall bear all the costs in relation thereto.

Power to lop trees
and hedges.

55.(1) Where any tree or hedge obstructs or interferes with the construction by a licensee of any electric supply line, or interferes or is likely to interfere with the maintenance or working of any electric supply line, owned by any licensee, such licensee shall give a seven days notice to the owner or occupier of the land on which the tree or hedge is growing, requiring the person to lop or cut it so as to prevent the obstruction or interference of the electric supply line, subject to the payment by such licensee of the expenses reasonably incurred by the owner or occupier of the land in complying with the notice:

Provided that in any case where such a notice is served upon an occupier who is not the owner of the land on which the tree or hedge is growing, a copy of the notice shall also be served upon the owner thereof, if his address is known.

(2) If within twenty-one days from the date of giving such notice the owner or occupier of the land on which the tree or hedge is growing gives a counter-notice to the licensee objecting to the requirements of the notice, the matter shall, unless the counter-notice is withdrawn following consultations between the licensee and the owner or occupier, be referred to the Commission for determination and the Commission may, after giving the parties an opportunity to be heard, make such orders as it thinks just, and any such order may empower the licensee, after giving a seven day prior notice to any such person by whom the counter-notice was given of the commencement of the work as the order may direct, to cause the tree or hedge to be lopped or cut, and may determine any question as to what compensation, if any, and expenses are to be paid:

Provided that any party aggrieved by any decision of the Commission with regard to compensation may within thirty days after being notified of such decision appeal to the Tribunal.

(3) The licensee shall issue instructions to his servants

and agents with a view to ensuring that trees and hedges shall be lopped or cut in a way that little damage as possible is done to trees, fences, hedges and growing crops, and shall cause the boughs lopped to be removed in accordance with the directions of the owner or occupier, and shall make good any damage done to land.

(4) Any compensation or expenses payable to the owner or occupier by the licensee under this section shall be a civil debt recoverable summarily.

(5) Where it is necessary to fell any trees, this section shall apply to the felling of trees *mutatis mutandis* as it applies to the lopping of trees.

(6) This section shall apply to electric supply lines owned or to be constructed by any licensee regardless of the type of license he holds.

Electric supply lines.

56. The licensee shall lay down or erect and keep in good state of repair suitable and sufficient electric supply lines for the purpose of enabling supply to be given in the area of supply specified in that behalf in the licence.

Supply of electrical energy to persons within area of supply.

57. (1) A person requiring a supply of electrical energy shall apply to the licensee, specifying the premises in respect of which the supply is required and the maximum power required to be supplied, and a reasonable date when the supply is required to commence.

(2) Upon application by any person in the area of supply, the licensee shall, within the period specified in the licence or any regulations made under this Act, notify the persons by whom the application is made, of the terms and conditions, which may include payments of whatever nature, to be complied with by such persons before the supply is provided.

(3) Notwithstanding any payments made in accordance

with subsection (2)–

- (a) all electric supply lines shall be the property of the licensee and may be used to supply other persons provided that such use does not prejudicially affect the supply of electrical energy to the person who first required such electric supply lines to be laid down or erected;
- (b) such person shall be entitled to reimbursement by the licensee of a fair and just proportion of the cost originally paid by such person from payment made by each person subsequently connected to such electric supply lines provided that a claim for such reimbursement shall be made within six years; and
- (c) the licensee shall determine the fair and just proportion of the cost to be reimbursed in accordance with regulations made under this Act.

(4) If any difference arises under this section as to the amount to be reimbursed by any person, that difference shall, upon the application of any person, be determined by the Commission.

(5) A licensee shall keep at his office forms of requisition, embodying a suitable note drawing attention to the provisions of this section, and a copy shall, on application, be supplied free of charge to any person within the area of supply, and any requisition so supplied shall be deemed valid in point of form.

Quantity of
electrical energy
supplied and
metering.

58.(1) The amount of electrical energy supplied to the consumer or the number of hours during which the supply is given, or the maximum demand taken by the consumer, or any other quantity or time connected with the supply shall be

ascertained by meters of a type approved by the Kenya Bureau of Standards, or determined in a manner agreed upon by the licensee and the consumer.

(2) The licensee shall supply and fix meters, on hire, upon the premises of the consumer and connect the supply system therewith, and the consumer shall pay to the licensee for the hire of any such meter or meters, such costs as may be approved by the Commission:

Provided that the licensee shall allow the consumer, if the consumer so wishes, to supply the meter or meters for the purpose of determining the quantity of the supply.

(3) The meters, whether the property of the licensee or of the consumer, shall be sealed by the licensee with an approved seal bearing the licensee's distinguishing brand or mark impressed thereon.

(4) The licensee may, in order to protect any meter or meters or any other apparatus belonging to him, install suitable cut-outs on a consumer's premises on the supply side of any such meter or other apparatus, and seal such cut-outs with an approved seal bearing the licensee's distinguishing brand or mark impressed thereon.

(5) Where any seal affixed under subsections (3) or (4) is broken without the authority of the licensee, the consumer upon whose premises the seal was placed commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or to a maximum term of imprisonment of one year or to both:

Provided that, where it can be proved that the offence was committed by some person other than the consumer, that person shall be punishable as if he were the consumer upon whose premises the breach occurred.

(6) Where a consumer who is supplied with electrical energy by the licensee has provided a meter for the purpose of ascertaining the quantity of electrical energy supplied and the licensee changes the method of charging for electrical energy supplied by him, the licensee shall either pay to that person the reasonable expenses which he may have incurred in providing a new meter for the purpose of ascertaining the quantity of electrical energy supplied according to the new method of charging, or provide such consumer with a new meter.

(7) A consumer shall be entitled to install in his premises a check meter or meters for the purpose of checking the quantity of electrical energy supplied to him but the registrations of such check meter shall not be taken into account in determining the quantity of electrical energy supplied to him and no such check meter shall be fixed and connected with the supply system except in such manner and subject to such conditions as the licensee may approve.

(8) The licensee shall not connect or disconnect any meter to be used for ascertaining the quantity of electrical energy supplied, or a consumer's check meter, or from any electric supply line through which electrical energy is supplied by the licensee, unless he has obtained the written consent of that person, or alternatively unless he has given to that person not less than forty eight hours' written notice of his intention to do so.

(9) The licensee shall not make any alteration, adjustment or readjustment in any meter being used for ascertaining the quantity of electrical energy supplied, as to affect the functioning of such meter unless the licensee has given to the consumer not less than forty eight hours' written notice of the intention to do so or unless otherwise mutually arranged.

(10) The consumer shall, at all times and at his own

expense, keep all meters belonging to him and used for ascertaining the quantity of electrical energy supplied, in proper order for correctly registering that quantity, and, in default, the licensee may cease to supply electrical energy through the meter until the defect is rectified.

(11) The licensee shall, at all times, at his own expense, keep all meters let for hire by him to any person, for ascertaining the quantity of electrical energy supplied, in proper order for correctly registering that quantity, and in default the said person shall not be liable to pay any charges for hire of the meter during such time as the default continues.

(12) The licensee shall, subject to the provisions of section 51, for the purposes of this section, have access to, and be at liberty to remove, test, inspect and replace any meters installed by the consumer for the purpose of ascertaining the quantity of electrical energy supplied at all reasonable times.

(13) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to fine not exceeding five hundred thousand shillings, or to a maximum term of imprisonment of one year, or to both.

Defective meters.

59.(1) Where a meter used to register the quantity of electrical energy supplied by a licensee to any consumer is found to be defective through no fault of the licensee or the consumer, the licensee may, in consultation with the consumer, determine the reasonable quantity of electrical energy supplied and recalculate the charges due to or from the consumer as appropriate for up to a maximum period of six months from the date the meter is established to be defective:

Provided that if the consumer had reported any suspected defect in the meter and the licensee did not immediately examine the meter, the licensee shall not be entitled to recover from the consumer any charges for more

than three months from the date the meter was established to be defective.

(2) Where any meter used to register the quantity of electrical energy supplied by any licensee to any consumer is found to be defective through interference by the consumer, the licensee may determine the reasonable quantity of electrical energy supplied and recalculate the charges due from consumer as appropriate from the date the licensee determines the meter to have been interfered with:

Provided that if the subject meter is no longer suitable for ascertaining the quantity of electrical energy supplied, the licensee shall be entitled to repair or replace the meter at the cost of the consumer who interfered with it.

(3) If any dispute arises under this section as to recalculation of electrical energy supplied to a consumer or as to interference with any meter, such dispute shall be referred to the Commission for determination.

Electric supply lines, meters and other apparatus are not fixtures.

60. (1) Any electric supply lines, meters, fittings, works or apparatus belonging to a licensee and lawfully placed or installed in or upon any premises not belonging to the licensee, whether or not fixed to any part of such premises shall—

- (a) remain the property of and may be removed by the licensee;
- (b) not be subject to the landlord's distress for rent in such premises; and
- (c) not be liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of such premises:

Provided that adequate indication is given on such

premises that such licensee is the actual owner of such lines, meters, fittings, works or apparatus.

(2) For the purposes of this section and of section 58, lines, meters, fittings and apparatus let, rented or disposed of by the licensee on terms of payment by instalments shall, until such instalments have been paid, be deemed to belong to the licensee.

When supply of electrical energy may be refused or discontinued.

61.(1) A licensee shall not, except for reasons beyond his control, reduce, discontinue or refuse the supply of electrical energy to any consumer, unless—

- (a) the consumer has failed to pay charges for consumption of electrical energy, whether such charges are due to the licensee for the supply of electrical energy to premises in respect of which such supply is demanded or in respect of other premises:

Provided that—

- (i) such charges have not been referred to the licensee by the consumer for resolution in accordance with the licensee's complaint handling and dispute resolution procedures approved by the Commission; and
 - (ii) the consumer has failed to pay the charges of energy consumption due to the licensee for the supply of electrical energy to the specific premises in respect of which supply is demanded and not in respect of any other premise;
- (b) the consumer fails or neglects to make good any defects in his installation:

Provided that those defects and the period within which such defects are to be rectified, have been communicated to the consumer in writing;

- (c) the consumer uses or permits to be used such supply for any purpose or deals with or permits such supply to be dealt with in any manner so as to interfere unduly or improperly with the efficient supply of electrical energy by the licensee to any person, or endangers public safety;
- (d) the consumer contravenes the provisions of subsections (5) or (10) of section 58;
- (e) the consumer denies the licensee access to the electric supply lines or any meters on the premises under the control of the consumer;
- (f) the premises or part thereof is the subject of an order for demolition made at the instance of a public or local authority; or
- (g) the supply of electrical energy is prohibited by law to such premises or part thereof.

(2) Where a person has given a licensee a deposit as security for payment for the supply of electrical energy, the licensee may, at any time, while any such charge or other sum remains unpaid and after giving that person not less than fourteen days notice in writing—

- (a) discontinue the supply of electrical energy to such person; or

- (b) apply the deposit for the electrical energy consumed and if any part of such charge or other sum remains unpaid thereafter, discontinue the supply of electrical energy to such person,

until such charge or other sum together with any expenses incurred in disconnecting such supply and any lawful charges for or incidental to the reconnection thereof have been paid.

(3) If any dispute arises as to—

- (a) any charges; or
- (b) the application of any deposit; or
- (c) any illegal or improper use of electrical energy; or
- (d) any alleged defects in any apparatus or protective devices; or
- (e) any unsuitable apparatus or protective devices;

it shall be referred to the Commission.

(4) Where any dispute referred to in subsection (3) has been referred to the Commission, or has otherwise been taken to court before a notice of disconnection has been given by the licensee, the licensee shall not exercise any of the powers conferred by this section until final determination of the dispute:

Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Commission, in addition and without prejudice to any other deposit the licensee is entitled to require, or the amount of the charge or other sum in dispute, and the consumer has failed to

comply with the request within forty-eight hours of the request having been made.

Power of the
Minister to provide
electric lines or
funds.

62. Where, in the opinion of the Minister, a supply of electrical energy should be obtained from any licensee or permit holder and after investigation, it is considered uneconomical or commercially inexpedient to provide for the necessary works as specified in that behalf, the Minister, may with the approval of the National Assembly, undertake in whole or in part the provision of any such works or of the funds necessary to defray the charges thereon or may guarantee such payments, upon such terms and conditions as the Minister may consider necessary or expedient.

Regulations for
electrical energy.

63. (1) Without limiting the generality of sections 5 and 6 and in accordance with section 110, the Minister may, on the recommendation of the Commission, make such regulations as may be necessary or expedient for the achievement of the objectives and purposes of this Act and in particular, for all or any of the following purposes—

- (a) prescribing the form and manner in which any application for review or adjustment of tariffs is to be made and the procedure for the review or adjustments of tariffs;
- (b) providing the procedure for application and transfer of licences;
- (c) prescribing generally the duties and obligations of licensees, permit holders, undertakers and consumers;
- (d) prescribing the form and manner in which every licensee shall keep his accounts and records of income and expenditure for the purposes of this Act;

- (e) providing for the securing the safety of the public from danger, personal injury or damage to property arising from the production, transmission, transportation, transformation, distribution, supply or use of electricity;
- (f) providing for the reporting of accidents to the Commission which have resulted in the loss of life, personal injury or damage to property;
- (g) providing for the inspection of and enquiry into the operation of undertakings;
- (h) providing for the measurement of electrical energy and the settlement of disputes as to measurements of electrical energy;
- (i) providing for the conditions on which new electricity connections may be made to any premises;
- (j) prescribing the conditions on which electrical energy supplied to a person may be resold to another person;
- (k) prescribing standards with regard to the quality, safety and reliability of supply of electrical energy and related installations; and
- (l) prescribing the procedures for hearings, settlement of disputes and any proceedings before the Commission.

Offences

Unauthorised,
fraudulent or
improper supply or
use of electrical
energy.

64. (1) A person who—

- (a) contravenes any of the conditions of a licence granted to him under this Act;
- (b) without lawful right (the proof of which shall be upon him) abstracts, branches off or diverts or causes to be abstracted, branched off or diverted any electrical energy, or consumes or uses any such electrical energy which has been wrongfully or unlawfully abstracted, branched off or diverted, knowing it to have been wrongfully or unlawfully abstracted, branched off or diverted; or
- (c) lays, erects or installs, or permits to be laid, erected or installed, any conductor or apparatus and connects it, or permits it to be connected, with any electric supply line through which electrical energy is supplied by a licensee, without the consent of the licensee; or
- (d) disconnects, or permits to be disconnected, any conductor or apparatus from any electric supply line belonging to a licensee, without the consent of the licensee; or
- (e) makes or permits to be made any alteration in his permanent installation without the previous approval of the licensee; or
- (f) in any case where the quantity of the supply of electrical energy is not ascertained by meter, uses any apparatus or device other than what he has contracted to pay for or uses such apparatus or device at any other time than the time

specified and for which he has contracted to pay;
or

- (g) uses the electrical energy supplied to him for other purposes other than the purposes for which it is supplied for; or
- (h) supplies any other person with any part of the electrical energy supplied to him by the licensee or the permit holder, without the consent of the licensee or the permit holder,

commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to a maximum term of imprisonment of one year, or to both.

(2) In any case where the person who commits an offence under subsection (1) is the consumer, the licensee may also discontinue the supply of electrical energy to the premises of such consumer or abstain from resuming such supply, if already discontinued, for such period as the Commission may direct, notwithstanding any contract which may have been previously entered into.

(3) The existence of artificial or unlawful means for making—

- (a) connection or disconnection as is referred to in paragraphs (c), (d) and (f) of subsection (1), or
- (b) making such alteration as is referred to in paragraph (e) of subsection (1), or
- (c) facilitating such use or supply as referred to in paragraphs (g), and (h) of that subsection (1),

shall, where the meter, indicator or apparatus is under the

custody or control of the consumer, whether it is his property or not, be prima facie evidence that such connection or disconnection, alteration, improper use or supply, as the case may be, has been fraudulently, knowingly and wilfully caused or permitted by the consumer.

- (4) A person who wilfully—
- (a) extinguishes or causes to be extinguished, any public lamps, or
 - (b) carelessly or accidentally breaks, throws down or damages any works of or under the control of a licensee, or
 - (c) improperly uses any of the electrical energy supplied by a licensee,

commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to a maximum term of imprisonment of one year, or to both.

Hindering, obstructing or interfering with the exercise of licensee powers.

65. A person hindering, obstructing or interfering with the exercise by a licensee with regard to an electric supply line, or by the servants or agents duly authorised in writing of any such licensee, of any right of entry upon land conferred by this Act for the purpose of laying and connecting, or repairing, inspecting or removing, an electric supply line commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs or continues.

Rural Electrification

Establishment of the Rural Electrification Authority.

66.(1) There is established an Authority to be known as the Rural Electrification Authority (hereinafter referred to as “the Authority”.)

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all other things or acts for the furtherance of the provisions of the Act which may be lawfully done or performed by a body corporate.

Functions of the Authority.

67. The Authority shall—

- (a) manage the Rural Electrification Programme Fund established under section 79;
- (b) develop and update the rural electrification master plan;
- (c) implement and source additional funds for the rural electrification programme;
- (d) promote use of renewable energy sources including but not limited to small hydros, wind, solar, biomass, geothermal, hybrid systems and oil fired components taking into account specific needs of certain areas including the potential for using electricity for irrigation and in support of off-farm income generating activities;
- (e) manage the delineation, tendering and award of

contracts for licences and permits for rural electrification; and

- (f) to perform such other functions as the Board may direct.

Board of the Authority.

68.(1) There shall be a Board of Directors of the Authority which shall consist of—

- (a) a Chairperson appointed by the President;
- (b) the permanent Secretary in the Ministry for the time being responsible for energy or his representative;
- (c) the permanent Secretary in the Ministry for the time being responsible for finance or his representative; and
- (d) a minimum of four and a maximum of eight other members appointed by the Minister.

(2) a member of the Board shall hold office—

- (a) in the case of the Chairperson, for a period of five years;
- (b) in the case of any other member, for a period of three years.

(3) A member of the Board may be re-appointed for one further term.

(4) A person shall be qualified for appointment as a Chairperson under subsection (1)(a) or member under subsection (1)(d) of the Board if such person—

- (a) is a holder of a university degree recognized in

Kenya in the fields of engineering, physical sciences, law, finance, economics or energy; and

- (b) has at least fifteen years experience in the relevant field, five of which is at a senior management level.

Conduct of business and affairs of the Board.

69. The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule.

Chief Executive and other staff of the Authority.

70. (1) The Minister may, on recommendation of the Authority, appoint a Chief Executive of the Authority from a list of three names of persons submitted by the Board through competitive selection.

(2) The person appointed under subsection (1) shall be the chief executive of the Authority and, subject to the directions of the Board, be responsible for the day-to-day management of the Authority.

(3) The Authority may appoint such other officers and staff as may be necessary for the efficient discharge of its functions.

Remuneration.

71. The Authority shall pay its members and staff such salaries and allowances as it shall determine in consultation with the Minister.

The common seal.

72.(1) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Authority when affixed on a document and duly authenticated shall be judicially and officially noticed unless and until the contrary is proved any necessary order or authorization by the Board under this

section shall be presumed to have been duly given.

(3) The affixing of the common seal of the authority shall be authenticated by the signature of the chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signature of the chairperson and the Chief Executive Officer:

Provided that the Board shall, in the absence of either the chairperson or the Chief Executive Officer in any particular matter, nominate one member to authenticate the seal on behalf of the chairperson or the Chief Executive Officer.

Protection from personal liability.

73. No matter or thing done by a member of the Board or any officer, employee or agent of the Authority shall, if the matter or thing is done *bonafide* for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent, any other person acting on his directions personally liable to any action, claim or demand whatsoever.

Liability of the Board for damages.

74. The provisions of section 73 shall not relieve the Authority of the liability to pay compensation or damages to any person for an injury to him, his property or any of his interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

Financial year.

75. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.

76. At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

Accounts and audit.

77.(1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure and assets of the Authority.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Controller and Auditor-General or to an auditor appointed under this section, the accounts of the Authority together with—

- (a) a statement of the income and expenditure of the Authority during that year; and
- (b) a detailed balance sheet of the Authority on the last day of that year.

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(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003 by the Controller and Auditor-General or by an auditor appointed by the Board with the approval of the Controller and Auditor-General.

Electricity sales levy.

78. The Minister may impose a levy of up to five percent on all electricity consumed in the country, the proceeds of which shall go into the Rural Electrification Programme Fund, set up under section 79.

Rural Electrification Programme Fund.

79. (1) The Minister shall establish a fund to be known as the Rural Electrification Programme Fund to support the electrification of rural areas and other areas, considered economically unviable for electrification by licensees.

(2) The Rural Electrification Programme Fund consists of—

- (a) the electricity sales levy as provided under section 78;
- (b) fees and other charges levied by the Commission

under this Act;

- (c) such moneys as may be appropriated by Parliament for that purpose;
- (d) donations, grants and loans; and
- (e) all other moneys lawfully received or made available for the programme as the Minister may approve.

(3) The Authority shall keep books and records of accounts and shall cause regular audits of such books and records to be undertaken.

PART IV ? PETROLEUM

Licensing

Licence for
petroleum business.

80.(1) A person shall not conduct a business of importation, refining, exportation, wholesale, retail, storage or transportation of petroleum, except under and in accordance with the terms and conditions of a valid licence.

(2) A licensee shall not sell petroleum to a person for the purpose of exportation or for resale in Kenya unless that person has a valid exporters or retail licence under this Act.

(3) A person shall not use a vehicle for the purpose of transporting petroleum unless there is in force, in respect of that vehicle, a valid petroleum permit issued under this Act.

(4) No person shall drive a vehicle, or engage a driver, for the purpose of transporting petroleum unless such driver is certified for that purpose in accordance with this Act.

(5) A person who contravenes this section commits an

offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to a maximum term of imprisonment of one year, or to both.

Licensing Agents.

81. The Commission may, in accordance with section 23 appoint competent and impartial persons to be licensing agents for the purpose of issuing licences under this Act.

Granting of licences.

82. (1) A person desirous of obtaining a licence under this Act shall make an application to the Commission or licensing agent in the manner prescribed by the Commission, and the Commission or licensing agent may, within thirty days—

(a) grant a licence accordingly, either without conditions or subject to such conditions as the commission may deem fit and shall be accompanied by the prescribed fee.

(b) refuse to grant such licence.

(2) Where the Commission or licensing agent—

(a) refuses to grant a licence; or

(b) imposes conditions on a licence,

the Commission or licensing agent shall give to the applicant, the reasons in writing for the action.

(3) A licence issued under this Act shall be valid for one year from the date of issue.

(4) An application for a renewal of a licence shall be made at least thirty days before the expiry date of the current licence and must be accompanied by the prescribed fee.

(5) If the Commission or the licensing agent is satisfied

that the applicant continues to meet the requirements for the issue of the licence, the Commission or the licensing agent shall renew the licence.

(6) If an application for the renewal of a licence has been made before the expiry of the licence but has not been dealt with by the Commission or the licensing agent when the licence is due to expire, the licence continues in force until the application for renewal is dealt with and any renewal in such a case shall be taken to have commenced from the day when the licence would have expired before the renewal.

(7) A person who contravenes subsection (4) shall be liable to a penalty equivalent to twenty per cent of the licence fee.

(8) A licence shall specify the nature of petroleum business and the premises at which the licensee may conduct his business and where a petroleum business is conducted at more than one premise, a separate licence shall be required for each of such premises.

Amendment of licences.

83.(1) Subject to the provisions of this Act, a person may make an application in the prescribed manner for amendment of the licence, and the Commission or the licensing agent may, upon payment of the prescribed fee, amend the licence and endorse it accordingly.

(2) Where the Commission or the licensing agent refuses to amend a licence under subsection (1), the Commission or licensing agent shall give to the applicant, if the applicant so requests, the reasons in writing for the refusal.

(3) A licence amended under this section shall retain the existing expiry date.

Display of licences or permits.

84.(1) Every licence or permits shall, except when

lodged with the Commission or licensing agent for any of the purposes of this Act, be displayed in a prominent position on the premises in respect of which it is issued.

(2) A licensee or permit holder who contravenes the provision of sub-section (1), commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof that the licence is not displayed.

Revocation of
licence.

85.(1) The Commission or licensing agent may suspend or revoke a licence where—

- (a) the undertaking or the execution of the works related thereto has not commenced at the expiry of twenty-four months from the date on which the licence or permit was granted, or at the expiry of any extended period which the Commission may allow;
- (b) it is satisfied that the licensee is either wilfully or negligently not operating in accordance with the terms and conditions of the licence, permit or the provisions of this Act or any regulations thereunder; or
- (c) the licensee is adjudged bankrupt.

(2) Unless otherwise specified in the licence, the Commission or licensing agent may give a licensee fourteen days notice to show cause why the licence should not be revoked.

(3) A notice under subsection (2) shall—

- (a) set out the relevant condition of the licence or the requirement of the Act to which the breach

relates;

- (b) specify the acts, omissions or other facts which, in the opinion of the Commission or the licensing agent, constitute a contravention of the conditions of the licence or requirements of the Act, and the reasons why the Commission or licensing agent is of the opinion that any of the circumstances mentioned under subsection(1) have occurred or arisen; and
- (c) be served at the licensed premises and shall take effect from the date of service.

(4) The Commission or licensing agent shall determine the matter within thirty days from the expiry of the notice.

(5) Any suspension or revocation of a licence shall not indemnify the licensee against any penalties for which such person may have become liable under the Act.

Replacement of a licence.

86. Where, upon application, it is shown to the satisfaction of the Commission or licensing agent that a licence has been lost, destroyed or defaced, the Commission or licensing officer shall, upon payment of the prescribed fee, issue a duplicate licence to the licensee.

Transfer of a licence.

87.(1) A licensee shall not transfer or otherwise divest any rights, powers or obligations conferred or imposed upon him by the licence without the consent of the Commission.

(2) The Commission may, on application by any of the following persons, transfer a licence or permit—

- (a) in the case of a death of the licensee or permit holder, to the legal representative of such licensee or permit holder;

- (b) in the case of the bankruptcy of the licensee or permit holder or assignment for the benefit of his creditors generally, to the lawfully appointed trustee or assignee;
- (c) in the case of a corporation in liquidation, to the lawfully appointed liquidator;
- (d) in any case where the licensee becomes subject to a legal disability, to any person lawfully appointed to administer his affairs; or
- (e) in the case of voluntary transfer of the undertaking, to the new owner of the undertaking.

(3) The Commission shall satisfy itself of the legal, technical and financial competence of the transferee to carry out the undertaking.

(4) The transferee shall undertake in writing to comply with the licence conditions.

(5) The Commission shall not withhold any consent to any application to transfer unless it has reason to believe that public interest is likely to be prejudiced by the transfer.

(6) In this section

“transfer of licence” includes the acquisition of a controlling interest directly or indirectly in the licence holder; and

“controlling interest” as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of

that person, whether through the ownership of shares, voting, securities, partnerships or other ownership interests, agreements or otherwise.

Register of licences
and permits.

88.(1)The Commission shall keep a register, in such form as it may determine, of all licences and permits granted and shall record therein, in respect of each licence or permit—

- (a) the particulars required under section 82 and 91;
- (b) particulars of any duplicate issued or any amendment of the licence or permit made under sections 83 and 86;
- (c) particulars of any suspension or revocation of the licence or permit under section 85; and
- (d) such other particulars as may be prescribed.

(2) Subject to subsection (3), any person may, during office hours, and upon payment of the prescribed fee, inspect the register of licences and permits.

(3) Notwithstanding the provisions of subsection (2), a person who is—

- (a) a member of the police force or a public officer acting in the course of his duty; or
- (b) an employee of the Commission or person authorised in writing by the Commission,

may inspect the register without payment of any fee.

Appeal against
action of the

89. A person aggrieved by the action of the

Commission or a
licensing agent.

Commission or a licensing agent in—

- (a) refusing to renew or grant a licence or revoking a licence; or
- (b) imposing conditions on a licence; or
- (c) refusing to replace or amend a licence,

may, within thirty days of receipt by him of written notification of such action, in writing appeal, to the—

- (a) Tribunal in case of an appeal against the Commission; or
- (b) Commission in case of an appeal against a licensing agent,

whose decision shall be communicated within forty-five days of receipt of the appeal by the Tribunal (or the Commission as the case may be) from any such aggrieved person.

Construction
permits.

90.(1) Any person intending to construct a pipeline, refinery, bulk storage facility or retail dispensing site shall, before commencing such construction, apply in writing to the Commission for a permit to do so.

(2) An application under subsection (1) shall—

- (a) specify the name and address of the proposed owner;
- (b) be accompanied by three copies of plans and specifications;
- (c) in the case of a pipeline,
 - (i) specify the points, between which the

proposed pipeline is to run,

- (ii) state what is to be transported by the proposed pipeline;
- (d) in the case of a refinery, bulk liquefied petroleum gas, or natural gas facility specify the location, type and capacity;
- (e) be accompanied by an environmental impact assessment report; and
- (f) contain such other details as may be necessary.

(3) The Commission shall consider every application received under this section and shall, if satisfied that the applicant meets the prescribed requirements, grant to the applicant, within forty five days, the permit to construct a pipeline, refinery, bulk storage facility, bulk liquefied petroleum gas facility, natural gas facility or retail dispensing site, as the case may be.

(4) A permit shall be subject to such conditions as may be prescribed.

(5) Where the Commission refuses to grant a permit under this section, it shall notify the applicant of such refusal specifying the reasons therefor and shall deliver such notice to the applicant personally or by registered post.

Conditions for granting permits.

91.(1) The Commission shall, before issuing a permit under section 90, take into account all relevant factors, including but not limited to-

- (a) the relevant Government policies;
- (b) compliance with the Environmental Management

No. 8 of 1999.

No. 6 of 1996.

Cap. 265.

and Co-ordination Act, 1999 and in particular, the report of the Environmental (Impact Assessment and Audit) Regulations, 2003, the Physical Planning Act, 1996, the Local Government Act and any other relevant legislation;

- (c) the financial capability of the applicant and methods of financing the proposed pipeline, refinery, bulk storage facility, or retail dispensing site; and
- (d) any other matter which, in the opinion of the Commission, may be affected by the granting or the refusal of the permit being sought.

(2) A permit shall contain such terms and conditions as the Commission may deem appropriate, including but not limited to the—

- (a) duration of the permit;
- (b) person authorised to execute the works;
- (c) area in which the works shall be executed; and
- (d) conditions to be satisfied before any works authorised by the permit are used, which may include a requirement for the execution of further works.

(3) Where a permit contains conditions prescribed in subsection (2) (d), no person shall, before the conditions are satisfied, use any works the execution of which was authorised by the permit, except to the extent specified in a notice given by the Commission to the holder of the permit specifying the extent to which the works may be used, notwithstanding that some of

the conditions have not been satisfied and such permit may, at any time, be revoked by the Commission in a subsequent notice in the *Gazette*.

(4) A notice given by the Commission under subsection (3) shall be conclusive evidence for the purposes of this Act that those conditions have been satisfied.

(5) Where a permit referred to in subsection (3) is cancelled or otherwise ceases to be in force prior to the completion of the authorised works, the holder shall, to the extent of partially executed works, be deemed to have satisfied the prescribed conditions.

Exemption from the requirement for a permit.

92. Notwithstanding any other provision of this Act—

- (a) emergency works for the construction of a pipeline, may be executed without any authorisation by the Commission:

Provided that as soon as is reasonably practicable and in any event not later than sixty days after the works have commenced or have been executed, the owner of the pipeline shall inform the Commission in writing of the works executed attaching copies of detailed construction drawings of such construction works and the route taken or intended to be taken by the pipeline;

- (b) no permit shall be required for the construction of a pipeline within a storage depot, a pipeline facility or refinery.

Suspension or revocation of a construction permit.

93.(1) Subject to subsection (2), the Commission may, by notice in the *Gazette*, suspend or revoke a construction permit if any term or condition thereof has not been complied with within the prescribed period.

(2) Where the Commission intends to revoke or suspend a permit under this section, it shall, at least twenty-one days before the date of the intended revocation or suspension, notify the holder of the permit of such intention, specifying the reasons thereof, and shall take every precaution to ensure fairness in the exercise of this power.

(3) The Commission may in writing, reinstate a permit revoked or suspended under subsection (1) if satisfied that the reasons for the revocation or suspension no longer exist.

Validity of permits.

94. If, after a permit to construct a pipeline, a refinery, a bulk storage facility or a retail dispensing site has been granted, the execution of the works has not commenced at the expiry of twelve months from the date on which the permit was granted, or at the expiration of any extended period which the Commission may allow, the permit shall cease to have effect.

Standards for petroleum products, equipment, facilities and installations.

95. (1) Petroleum imported or produced locally for use in Kenya, petroleum products, equipment, facilities and installations shall conform to the relevant Kenya Standard:

Provided that where no such standard exists, the relevant international standards approved by the Kenya Bureau of Standards shall apply.

(2) A person who offers for sale in Kenya or transports or stores petroleum meant for use in Kenya shall ensure that the specifications of such petroleum is in accordance with subsection (1):

Provided that no person diverts for sale in Kenya, goods destined for other markets.

(3) A person who—

(a) sells petroleum not conforming to the relevant

Kenya Standard or any other standard approved by the Commission; or

(b) stores, transports, or sells adulterated petroleum,

commits an offence and shall, on conviction, be liable to a fine not exceeding two million shillings, or to a maximum term of imprisonment of two years, or to both.

Maintenance of minimum operational stocks.

96. It shall be the duty of a person licensed to import petroleum to maintain such quantities of petroleum and at such locations as may be prescribed by the Minister in consultation with the Commission.

Power of the Minister to provide strategic petroleum stocks.

97. The Minister may undertake in whole or in part, the provision of financing, procurement, maintenance and management of petroleum strategic stocks.

Compliance with environmental, health and safety standards.

98.(1) A person engaged in petroleum business shall comply with the relevant Kenya Standard and in the absence of such standard, any other standard approved by the Commission from time to time on environment, health and safety in consultation with the relevant authorities and in conformity with the relevant statutes touching on environment, health and safety standards.

(2) In the event of a fire, explosion, oil spill, injury or fatality occurring in the course of operating a petroleum facility or transportation of petroleum, either by accident or through negligence, the operator or person transporting petroleum shall forthwith clean up the polluted or damaged environment, at his own expense, to the satisfaction of the Commission and other relevant authorities.

Provided that any person engaged in the transportation of petroleum and petroleum products shall have an oil clean-up plan in compliance with the national oil policy.

(3) If the operator or person transporting petroleum fails, or unreasonably delays, to carry out the work referred to in subsection (2), the Commission may cause any work not carried out to be executed at the expense of the said operator or person transporting petroleum.

(4) Nothing contained in this section shall be construed as relieving the operator or person transporting petroleum from any liability in respect of any loss or damage caused by his failure to comply with safety measures as required in subsection (5).

(5) A person transporting petroleum by road, rail, coastal or inland waters, pipeline or any other mode shall institute measures to ensure that their mode of transportation is safe.

(6) The Commission may, at any time, require the operator of a facility or a transporter to show that he is in compliance with the provisions of this section.

Designated parking places reserved exclusively for petroleum tankers.

99.(1) A local authority shall designate a place or places exclusively reserved for parking of petroleum tanker vehicles.

(2) A local authority that contravenes subsection (1) commits an offence and shall be liable, on conviction, to pay a fine of fifty thousand shillings for each day or part thereof that the offence continues.

Offences

Contravening provisions relating to petroleum undertakings.

100.(1) A person who—

- (a) contravenes any provisions of section 96 on maintenance of minimum operational stock of

petroleum;

- (b) being the owner or operator of a refinery, pipeline, bulk liquefied petroleum gas or natural gas facility, service station, filling station or storage depot or transporter of petroleum, fails to institute appropriate environmental, health or safety control measures;
- (c) being the owner of a pipeline, refinery or bulk liquefied petroleum gas or natural gas facility, contravenes the provisions of this Act or any regulations made thereunder relating to the construction or operation of a pipeline, refinery or bulk liquefied petroleum gas or natural gas facility or regulations thereof;
- (d) not being the owner of the pipeline or his agent, interferes in any manner with such pipeline;
- (e) being the owner of a retail dispensing site or storage depot, contravenes the provisions of this Act or any regulations made thereunder relating to the construction or operation of a retail dispensing site storage depot,

commits an offence and shall, on conviction, be liable to a fine not exceeding two million shillings, or to a maximum term of imprisonment of two years, or to both.

(2) In any case where the person who contravened the provisions of subsection (1) is licensed under this Act, the Commission may suspend or revoke his licence.

Contraventions by
petroleum carrying

101.(1) The owner or master of any ship carrying

ships.

cargo, any part of which consists of petroleum, who fails to give notice to the port authorities upon entering a port, as may be required by regulations made under this Act shall, on conviction, be liable to a fine not exceeding two million shillings, or to a maximum term of imprisonment of two years, or to both.

(2) In the event of the contravention of any regulations made under this Act relating to precautions to be observed with respect to ships carrying petroleum within a port, the owner and the master of the ship in relation to which the contravention occurs shall, on conviction, be liable to a fine not exceeding two million shillings, or to a maximum term of imprisonment of two years, or to both.

(3) Any person who, while within Kenya's Exclusive Economic Zone and Outer Continental Shelf, discharges or allows to escape into the water—

- (a) petroleum or water mixed with petroleum; or
- (b) water from bilges or tanks; or
- (c) water used for flushing pipes and connections; or
- (d) sand used to absorb petroleum,

commits an offence and shall, on conviction, be liable to a fine not exceeding two million shillings, or to a maximum term of imprisonment of two years, or to both.

(4) In addition to the penalty imposed under subsection (3), the person liable shall be responsible, at his own cost, for cleaning the water and restoring it to its original status.

Regulations for
petroleum.

102. Without limiting the generality of section 6 and in

accordance with section 110, the Minister may, on the recommendation of the Commission, make regulations–

- (a) defining the kind of petroleum to which the regulations shall apply, and dividing petroleum into classes or categories and making different provisions with regard to such classes or categories;
- (b) providing for the importation, refining, exportation, landing, loading, shipping, transportation, storage, wholesale and retail of petroleum and prescribing a system of licensing for the purposes aforesaid, the manner in which application for any such licence shall be made, the conditions of licence, the authorities which may grant such licences, the fees which may be charged and any other matters incidental thereto;
- (c) providing for exemption to the armed forces from the requirement of licences;
- (d) providing for importation of petroleum through open tendering system and the manner in which such system shall operate;
- (e) providing for maintenance of minimum operational stocks of petroleum and procedures thereof;
- (f) providing for maintenance of strategic stocks of petroleum and procedures thereof;
- (g) providing for the mode of sale, metering, documentation and display of prices of petroleum in retail dispensing sites and depots;
- (h) providing for environmental, health and safety

standards associated with the handling, storage and use of petroleum;

- (i) providing for notice to be given by the owner or master of any ship entering a port with petroleum, and for ascertaining the quantity and specification of any petroleum on board any such ship;
- (j) determining the places at which, and the conditions on and subject to which, petroleum may be imported, offloaded, landed, stored, loaded or transhipped;
- (k) providing for the delivery to such officer as may be specified of samples of petroleum landed or intended to be landed and for the testing of such sample;
- (l) providing for the type and location of the premises in respect of which licences to possess petroleum may be granted, the inspection of premises so licensed and the taking of samples and the testing of petroleum found thereon;
- (m) governing the design, construction and operation of pipelines, refineries, bulk liquefied petroleum gas facilities, retail dispensing sites, storage depots and providing for the protection of property and the environment and the safety of the public in the construction and operation thereof;
- (n) governing the design and construction of vehicles to be used in the transportation of petroleum by road, rail, inland or coastal waters;
- (o) prohibiting or restricting the carriage of goods

and passengers in vessels carrying petroleum;

- (p) prescribing the quantity of petroleum that may be conveyed at any one time or in any one vehicle;
- (q) prescribing the precautions to be observed in the transportation of petroleum, in the manner of packing and the mode and time of transit and in the loading and unloading of vessels used for such transportation;
- (r) in consultation with the body responsible for standards, prescribing apparatus for testing petroleum, the tests to be applied and the manner in which tests are to be made;
- (s) in consultation with the body responsible for standards, appointing inspectors and agents for the testing and examination of petroleum and prescribing their powers and duties;
- (t) prescribing the marking of fuels and categories of the petroleum in which such marking shall be carried out;
- (u) prescribing for the provision of petroleum statistics and information to the Commission;
- (v) providing for the development and coordination of a national oil spill response plan including measures to prevent oil spills and a mechanism for compensation in the event of an oil spill;
- (w) determining the retail prices of petroleum and petroleum products:

Provided that a person convicted of an

offence under this paragraph shall be liable to a fine exceeding Kshs. One million or the withdrawal of the operating licence or both;

- (x) generally for the better carrying out of the objects and purposes of this Act.

PART V ? RENEWABLE ENERGY, ENERGY EFFICIENCY AND CONSERVATION

Renewable energy.

103.(1) The Minister shall promote the development and use of renewable energy technologies, including but not limited to biomass, biodiesel, bioethanol, charcoal, fuelwood, solar, wind, tidal waves, hydropower, biogas and municipal waste.

(2) The Minister may perform such functions and exercise such powers as may be necessary under this Act to promote the development and use of renewable energy, including but not limited to—

- (a) formulating a national strategy for coordinating research in renewable energy;
- (b) providing an enabling framework for the efficient and sustainable production, distribution and marketing of biomass, solar, wind, small hydros, municipal waste, geothermal and charcoal;
- (c) promoting the use of fast maturing trees for energy production including biofuels and the establishment of commercial woodlots including peri-urban plantations;
- (d) promoting the use of municipal waste for energy

production, and

- (e) promoting the development of appropriate local capacity for the manufacture, installation, maintenance and operation of basic renewable technologies such as bio-digesters, solar systems and hydro turbines;
- (f) promoting international co-operation on programmes focusing on renewable energy sources;
- (g) harnessing opportunities offered under clean development mechanism and other mechanisms including, but not limited to, carbon credit trading to promote the development and exploitation of renewable energy sources;
- (h) promoting the utilization of renewable energy sources for either power generation or transportation;
- (i) promoting co-generation of electric power by sugar millers and sale of such electric power through the national grid directly to the consumers;
- (j) promoting the production and use of gasohol and biodiesel.

Energy efficiency and conservation programme.

104.(1) The Minister shall develop and manage a prudent national energy efficiency and conservation programme.

(2) The Minister may perform such functions and exercise such powers as may be necessary under this Act to enhance energy efficiency and conservation, including but not

limited to–

- (a) making, in consultation with the Kenya Bureau of Standards, requirements for the particulars to be displayed on labels on equipment or on appliances;
- (b) taking all measures necessary to create awareness and for the dissemination of information for efficient use of energy and its conservation;
- (c) strengthening consultancy services in the field of energy conservation;
- (d) promoting research and development in the field of energy conservation;
- (e) formulating and facilitating implementation of pilot projects and demonstration projects for promotion of efficient use of energy and its conservation;
- (f) giving financial assistance to institutions for promoting efficient use of energy and its conservation;
- (g) supporting the preparation of educational curriculum on efficient use of energy and its conservation for educational institutions, and coordinate with them for inclusion of such curriculum in their syllabus;
- (h) implementing international co-operation programmes relating to efficient use of energy and its conservation; and
- (i) giving financial incentives for any investment

made to replace or install additional capital investments to improve energy efficiency;

- (j) making it mandatory, in collaboration with Kenya Bureau of Standards, the importation of energy efficient but cost effective technologies.

Energy conservation
in factories and
buildings.

105.(1) The Commission shall, in consultation with the Minister, designate factories or buildings and electrical appliances by types, quantities of energy use, or methods of energy utilization for purposes of energy efficiency and conservation.

(2) In the event that there is a reasonable cause, the Commission may give instruction to the owner of any designated factory or building, to furnish factual information on energy utilization for the purpose of inspection and to assure that energy conservation measures are in accordance with the standard, criteria and procedures provided in regulations under this Act and the said owner of the designated factory or building shall comply within thirty days starting from the date of receipt of such instruction, and in default commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to a maximum term of imprisonment of one year, or to both.

(3) If the Commission determines that the owner of the building is not able to comply without financial or technical assistance and that the activities required to be in compliance may be eligible for assistance from an identified source, the Commission may decide to give additional grace period to allow the owner to access assistance from the identified source.

(4) The owner of the designated factory shall keep records of information required under regulations under this Act at the designated factory for a minimum of five years, and

in default commits an offence and shall on conviction, be liable to a fine not exceeding one million shillings, or to a maximum term of imprisonment of one year, or to both.

Energy conservation
in buildings.

106.(1) The owner of a building designated under section 105, shall conserve energy, audit and analyze energy consumption in his building in accordance with the standards, criteria, and procedures as prescribed by regulations.

(2) A person who fails to comply with this provision commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to a maximum term of imprisonment of one year, or to both.

PART VI ? THE ENERGY TRIBUNAL

Appeals from
decisions of the
Commission.

107. Where under this Act the provision is made for appeals from the decisions of the Commission, all such appeals shall be made to the Energy Tribunal, in accordance with the provisions of this Part.

Establishment and
constitution of the
Energy Tribunal.

108.(1) For the purpose of hearing and determining appeals in accordance with section 107 and of exercising the other powers conferred on it by this Act, there is established a tribunal to be known as the Energy Tribunal, hereinafter referred to as the “Tribunal”.

(2) The members of the Tribunal shall be appointed from among persons with a university degree and not less than fifteen years relevant experience in matters related to electricity, petroleum, finance, economics, engineering, energy or law and shall consist of—

- (a) a Chairperson and vice Chairperson appointed by the President, in consultation with the Judicial Service Commission from among persons qualified to be judges of the High Court;

- (b) three other members who are persons possessing, in the opinion of the Minister, expert knowledge of the matters likely to come before the Tribunal and who are not in the employment of the Government or any state corporation; and
- (c) the members under paragraph (b) shall be appointed by the Minister in consultation with the Attorney General.

Conditions of appointment.

109.(1) A member of the Tribunal shall hold office for a period of three years and shall be eligible for re-appointment for one further term of three years.

(2) A member of the Tribunal shall hold office on such terms and conditions as shall be prescribed in the instrument of appointment.

(3) The provisions set out in the Third Schedule shall have effect in relation to the membership and conduct of business and affairs of the Tribunal.

PART VII ? MISCELLANEOUS PROVISIONS

Minister may make regulations generally.

110.(1) The Minister may, on the recommendation of the Commission and subject to sections 63 and 102, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations to be made under this Act may be made by the Commission on its own motion or may be proposed to the Commission by any licensee or person.

(3) Before making recommendation of any regulations to

the Minister under this Act, the Commission shall publish the proposed regulations for purposes of inviting proposals from the public, in such manner as it may deem fit, at least forty days before the regulations are submitted to the Minister.

(4) The regulations made by the Minister in accordance with this section may, impose conditions, requiring acts or things to be performed or done to the satisfaction of the Commission, prohibiting acts or things from being performed or done and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or within which such conditions shall be fulfilled.

(5) The regulations made under this Act may be made for a limited period or without limit of period, and may be made subject to such conditions as the Minister deems fit, and may contain such supplemental and consequential provisions as the Minister considers necessary for giving full effect to the regulations.

Powers of the
Minister generally.

111.(1) The Minister shall be responsible for—

- (a) formulation of policy relating to the energy sector;
- (b) the appointment of Commissioners of the Commission, members of the Authority, and the Tribunal;
- (c) the imposition of levies under this Act;
- (d) formulation and co-ordination of a disaster preparedness plan for the energy sector;
- (e) policy relating to financing, procurement, maintenance and management of strategic petroleum stocks; and

- (f) the performance of such other functions as are provided under this Act or any other written law.

(2) On the occurrence of an emergency the Minister may, in consultation with the Commission, exercise such authority and give such directions as may be necessary in the public interest for the proper continuance or resumption of the production or supply of energy.

(3) The Minister may, from time to time, give directions in writing to the Commission with respect to the policy to be observed and implemented by the Commission.

Licensee to furnish information.

112. It shall be the duty of every licensee to furnish to the Commission at such times and in such form and manner such information as the Commission may, in writing, require.

False information.

113. Any person who makes a false statement or a statement which he has reason to believe is untrue, to the Minister, or to the Commission, committee, agent or an officer acting on behalf of the Commission, as required under this Act, commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or to a maximum term of imprisonment of six months or to both.

Secrecy of information.

114. No information relating to any matter obtained under section 112 shall be published or otherwise disclosed to a third party without prior consent in writing from the person from whom the information was obtained:

Provided that nothing in this section shall restrict—

- (a) the disclosure of such information to—
 - (i) the Minister responsible for energy;

- (ii) any officer or authority having functions in relation to energy, policy development or economic planning of petroleum business in Kenya;
- (b) the use of such information in any manner, which the Commission deems necessary or expedient in connection with the objects of this Act.

Standardisation.

115. No person shall use or employ for or in connection with any of the purposes of producing, generating, transforming, transmitting, distributing, supplying, or importing, exporting, transporting, refining, storing, selling or using, any form of energy, any mode, material or apparatus other than that which complies with the specification or standard of the Kenya Bureau of Standards or where no such standard exists, any international standard approved by the Kenya Bureau of Standards.

Commission not to discriminate.

116. While discharging its functions and exercising its powers under the Act, the Commission shall ensure that no particular person is given undue preference or subjected to any undue disadvantage.

Reporting of accidents and incidents.

117.(1) All persons engaged in any undertaking or activity pursuant to a licence or permit under this Act shall notify the Commission in writing, in the form and manner prescribed by the Commission, of any accident or incident causing loss of life, personal injury, explosion, oil spill, fire or any other accident or incident causing significant harm or damage to the environment or property which has arisen in Kenya or within Kenya's Exclusive Economic Zone or Outer Continental Shelf.

(2) The Commission may direct an investigation to be carried out into any accident or incident under subsection (1) and take such action as it deems necessary.

Recovery and application of licence fees and penalties.

118. Any penalty, fine, fee, expenses or other moneys recoverable under this Act or a licence, the recovery of which is not otherwise specifically provided for, shall be a civil debt recoverable summarily.

Offences by bodies corporate or their employees.

119. An employer or principal shall be liable for an offence committed by an employee or agent under this Act, unless the employer or principal proves that the offence was committed against his express or standing directions.

Penalties not to affect other liabilities

120. The penalties imposed under this Act shall be in addition to and not in derogation of any liabilities in respect of payment of compensation or in the case of a licensee, the revocation of the licence.

Prosecution of offences.

121. The Attorney-General may, on the request of the Commission, appoint any officer of the Commission or an advocate of the High Court to be a public prosecutor for the purposes of the offences under this Act.

General penalty.

122. Where any default in or contravention of any of the provisions of this Act is made for which no fine or penalty is expressly stated, the person so defaulting or contravening shall, on conviction, be liable to a fine not exceeding one million shillings.

PART VIII ? REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

Repeals and savings.
Act No. 11/97
Cap. 116.

123.(1) Subject to the provisions of subsection (2), the Electric Power Act, 1997 and the Petroleum Act are repealed.

(2) Notwithstanding the provisions of sub-section(1)–

Cap. 116.

(a) anything done under the provisions of the Electric Power Act, 1997 or the Minister under the provisions of the Electric Power Act, 1997

and the Petroleum Act before the commencement of this Act shall be deemed to have been done under the provisions of this Act;

Cap. 116.

- (b) any statutory instruments issued by the Electricity Regulatory Board or the Minister under the provisions of the Electric Power Act, 1997 and the Petroleum Act before the commencement of this Act shall be deemed to be statutory instruments granted by the Commission under the provisions of this Act and shall remain in force until specifically revoked under this Act;
- (c) any revocation of a licence or permit under this Act shall not indemnify the licensee from any liabilities to which the person may have become liable under the Act before such revocation;
- (d) the tariffs existing at the commencement of this Act shall continue being in place until new tariffs are *gazetted* under this Act; and
- (e) any subsidiary legislation issued before the commencement of this Act shall, as long it is not inconsistent with this Act, remain in force until repealed or revoked by subsidiary legislation under the provisions of this Act and shall, for all purposes, be deemed to have been made under this Act.

(3) Nothing in this Act or a licence shall exempt the licensee or his undertaking from the provisions of, or deprive of the licensee of the benefits of, any general Act relating to energy or to the supply of, or price to be charged for, energy which may be enacted after the granting of a licence.

Transitional provisions.

124. The provisions of the Fourth Schedule shall apply.

FIRST SCHEDULE

(s. 18)

**PROVISIONS AS TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF THE ENERGY COMMISSION.**

The Commissioners
to meet at least four
times in a year.

1. The Commissioners shall meet as often as necessary for the transaction of business but it shall meet not less than four times every financial year and not more than four months shall elapse between the date of one meeting and the next.

The Chairperson to
preside all meetings.

2.(1) The Chairperson shall preside at every meeting of the Commission at which the chairperson is present but in the absence of the chairperson, the commissioners present shall appoint a commissioner from among their number to preside at that meeting.

(2) The Chairperson or, in the absence of the chairperson a commissioner appointed by the Commission to act in the place of the chairperson, may at any time call a special meeting upon a written request by a majority of the commissioners.

Notice of meeting.

3. Unless five commissioners otherwise agree, at least seven days' written notice of every meeting of the Commission shall be given to every commissioner of the Commission.

Decision of the
Commission to be
by majority.

4. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of votes of the commissioners present and in the case of an equality of votes, the Chairperson or the commissioner presiding shall have a casting vote.

A commissioner is
entitled to have
opinion recorded.

5. Any commissioner present at a meeting of the Commission or a Committee thereof, shall have the right to require his opinion to be recorded in the minutes if the Commission or the Committee, as the case may be, passes a resolution, which in the opinion of that commissioner is contrary

to his advice or to law.

Commissioner to disclose interest.

6. A commissioner who has a direct or indirect interest in a matter being considered or to be considered by the Commission shall, as soon as possible after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Commission and shall not be present during any deliberations on the matter.

The Commission to cause minutes to be recorded and kept.

7. The Commission shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Commission at the next meeting of the Commission and signed by the Chairperson or the commissioner presiding at the meeting.

Quorum.

8. (1) Subject to subsection (2), five commissioners shall constitute a quorum for the conduct of business at any meeting of the Commission.

(2) When there is no quorum at or for the continuation of a meeting of the Commission only because of the exclusion of a commissioner under paragraph 6, the other commissioners present may, if they deem it expedient so to do -

(a) postpone the consideration of that matter until there is a quorum; or

(b) proceed to consider and decide the matter as if there was quorum.

SECOND SCHEDULE

(s 69.)

**PROVISIONS AS TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF THE BOARD OF RURAL
ELECTRIFICATION AUTHORITY**

Termination of appointment.

1.(1) A member of the Board may resign office by

notice in writing delivered to the President or the Minister, as the case may be.

(2) The President or the Minister, as the case may be, may on the recommendation of the Board, remove from office a member who-

- (a) is unable to perform the functions of his office by virtue of mental or physical infirmity of body or mind;
- (b) is absent from three consecutive meetings of the Board without reasonable cause to the satisfaction of the Board in consultation with the Minister;
- (c) is declared or becomes bankrupt;
- (d) fails to disclose to the Board any interest in any contract or matter before the Board; or
- (e) is convicted of criminal offence involving dishonesty, fraud or moral turpitude and sentenced for a term exceeding six months.

Meetings of the Board.

2.(1) The Board shall meet as often as necessary for the transaction of business at such places and at such times as may be decided upon by the Board but it shall meet at least four times every year.

(2) Subject to the provisions of this Act, the Board may regulate its own procedure.

Headquarters.

3. The headquarters of the Authority shall be Nairobi.

Disclosure of interest.

4. A member of the Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall as soon as possible after the relevant facts

concerning the matter have come to his knowledge disclose the nature of his interest to the Board, and shall not be present during any deliberations on the matter by the Board or take part in decision of the Board on the matter.

Delegation by the Board.

5. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of the functions or duties of the Board under this Act or under any other written law.

Contracts and instruments.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorised by the Board for that purpose.

THIRD SCHEDULE

(s. 109)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE ENERGY TRIBUNAL

Oath of office.

1. A person who is appointed a member of the Tribunal shall, before assuming the duties of his office take and subscribe to the oath of allegiance to the office.

Disclosure of interest.

2. Where a member of the Tribunal, as constituted for the purposes of a proceeding, has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions, he shall disclose the interest to the parties to the proceeding and shall not be present during any deliberations on the matter by the Tribunal to take part in decision of the Tribunal on the matter.

Termination of appointment.

3. (1) A member of the Tribunal may resign his office by notice in writing addressed to the President or the Minister, as the case may be.

(2) The President or the Minister, as the case may be, may in consultation with the Judicial Service Commission, remove from office, a member of the Tribunal who-

- (a) is unable to perform the functions of his office by virtue of mental or physical infirmity of body or mind;
- (b) is absent from three consecutive meetings of the Tribunal without reasonable cause to the satisfaction of the Tribunal in consultation with the Minister;
- (c) is declared or becomes bankrupt;
- (d) fails to disclose to the Tribunal any interest in any contract or other matter before the tribunal; or
- (e) is convicted of a criminal offence involving dishonesty, fraud or moral turpitude and sentenced for a term exceeding six months.

Secretary.

4. The Attorney General shall designate a public officer to be the secretary to the Tribunal.

Official seal.

5. (1) The Tribunal shall have an official seal.

(2) The official seal of the Tribunal shall be affixed by the Chairperson to such documents as the Tribunal may direct.

(3) In the absence of the Chairperson the Tribunal may nominate one member to authenticate the seal of the Tribunal on behalf of the Chairperson.

(4) The Courts shall take Judicial notice of documents

where the seal is properly affixed.

Arrangement of
business.

6.(1) The Chairperson shall be responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal.

(2) Without limiting the operation of subsection (1), the Chairperson shall give directions relating to-

- (a) the arrangement of the business of Tribunal;
- (b) the places at which the Tribunal may sit generally;
and
- (c) the procedure of the Tribunal at a particular place.

(3) The times and places of the hearings of the Tribunal shall be determined by the Chairperson with a view to securing a reasonable opportunity for applicants to appear before the Tribunal with as little inconvenience and expense as is practicable.

Quorum of the
Tribunal.

7. (1) The Chairperson shall preside at all sittings of the Tribunal at which he is present and in the absence of the Chairperson, the Vice Chairperson shall preside.

(2) The quorum of the Tribunal shall be three members including the Chairperson.

Technical advice.

8. The Tribunal may seek technical advice from persons whose specialised knowledge or experience may assist the Tribunal in its proceedings:

Provided that such persons shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.

Remuneration.

9.(1) There shall be paid to the Chairperson and the

members of the Tribunal such remuneration and allowance as the Minister may determine.

(2) Any person giving technical advice to the Tribunal shall be paid such allowance as may be determined by the Minister.

Jurisdiction of the Tribunal.

10. (1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy sector arising under this Act.

(2) For greater certainty, the jurisdiction of the Tribunal shall not include the trial of any criminal offence or the hearing of any dispute that a licensee and any other party may have agreed to settle in accordance with their agreement.

Power of review and appeals from Tribunal.

11. (1) The Tribunal may, of its own motion or upon application by an aggrieved party, review its judgements and orders.

(2) Judgements and orders of the Tribunal shall be executed and enforced in the same manner as judgements and orders of the High Court.

(3) Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court.

(4) The law applicable to appeals from the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to appeals from the Tribunal to the High Court.

(5) Except in the case of an appeal under this section it shall not be lawful for any court or tribunal to entertain any action or proceeding of any nature for the purpose of questioning any judgement, finding, ruling, order or proceeding of the

Tribunal.

(6) A person aggrieved by the decision of the High Court under this section may, within thirty days of the date of the decision, appeal to the Court of Appeal.

Procedure of the
Tribunal.

12. (1) The Tribunal shall meet as and when there is need to exercise its jurisdiction under this Act.

(2) Unless a unanimous decision is reached, a decision on any matter before the Tribunal shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(3) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice.

(4) Except as prescribed in this Act, the Tribunal shall regulate its own procedure.

FOURTH SCHEDULE

(s. 124)

TRANSITIONAL PROVISIONS

Commission to be
successor of
Electricity
Regulatory Board.

1. (1) The Energy Commission shall be the successor to the Electricity Regulatory Board established by the Electric Power Act (now repealed) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Electricity Regulatory Board existing at the commencement of this Act shall be automatically and fully transferred to the Energy Commission and any reference to the Electricity Regulatory Board in any contract or document shall, for all purposes, be deemed to be a reference to the Energy Commission established under section 4.

(2) The persons who at the commencement of this Act

are the Chairperson and members of the Electricity Regulatory Board shall become Chairperson and Commissioners respectively, as the case may be, of the Commission for the remainder of their tenure in accordance with their appointment under the repealed Act.

(3) For the greater certainty and subject to subsection (2), such persons shall have and may exercise and perform all the powers and functions of Chairperson or Commissioners, as the case may be, as if they were appointed under Section 10.

(4) Every person who at the commencement of this Act is an employee of the Electricity Regulatory Board (not then being under notice of dismissal or resignation) shall, on that day and subject to this Act, become an employee of the Commission on the same terms and conditions.

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