

THE ELECTRICITY ACT, 2004

Act**No. 2 of 2004****ARRANGEMENT OF SECTIONS**

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Act to make provisions for the regulation of the generation, transmission, wheeling distribution, sale, importation and exportation, use and safety of electricity and for matters connected therewith or incidental thereto.

ENACTED by the Parliament of Malawi as follows:-

PART 1-PRELIMINARY

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| Short Title and commencement | 1. This Act may be cited as the Electricity Act, 2004 and shall come into force on such date or dates as the Minister may appoint by notice published in the Gazette. |
| Interpretation | 2. In this Act unless the context otherwise requires- |
| No.20 of 2004 | <p>“Authority” means the Malawi Energy Regulatory Authority established under Section 3 of the Energy Regulation Act;</p> <p>“Case of Emergency” with reference to a right of entry on or to land or premises conferred under this Act, means a case in which the person requiring entry to the land or premises in question has reasonable cause to believe that circumstances exist which are likely to endanger life or property, and that immediate entry to such land or premises is necessary to verify the existence of the circumstances or to ascertain their cause or to effect a remedy;</p> <p>“Customer” means a person purchasing electricity;</p> <p>“Consumer” means a person using electricity;</p> <p>“Contract of Supply” means a contract between the operator of an electricity undertaking and any other person for the supply of electricity to that person;</p> <p>“Distribution” means the conveyance of electricity at less than 66,000 volts (or as may be prescribed by notice in the Gazette) from the transmission grid to customers through a distribution power system, and the terms "distribute" and "distributing" have corresponding meanings;</p> <p>“Distributor” means a person distributing electricity;</p> <p>“Distribution Line” means any cable underground or overhead line for the distribution or reticulation of electricity from an electricity undertaking to a customer, together with any transformers, switchgear or other works necessary to, and used in connection with such cable underground or overhead line, and the buildings or such part thereof as may be required to accommodate such transformers, switchgear and other works;</p> |

“Electricity” means electric energy generated from hydro, thermal (coal, diesel, oil, biomass, gas, etc) photovoltaic, wind, nuclear and any other source as defined in the energy laws;

“Electricity Undertaking” means any installation works or services for the commercial generation, transmission, wheeling, distribution or supply of electricity, which is owned or operated by a licensee, and ‘electricity undertaker’ bears a corresponding meaning;

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“Energy Laws” has the meaning ascribed thereto in the Energy Regulation Act 2004

“Generation” means the production of electricity for sale, and the terms "generate" and "generating" have corresponding meanings;

“Generator” means a person generating electricity;

“Generation Station” means any station for generating electricity including any building, plant and machinery used for the purpose and all accessories necessarily incidental thereto, together with the site thereof, and any site intended to be used for such a station;

“Interconnected System” means all high voltage electricity lines of 66,000 volts and above (or as may be prescribed by notice in the Gazette) including the related substations and associated equipment and generation stations to which they are connected and any distribution system connected thereto;

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“Licensee” means a holder of a licence granted or deemed to be granted by the Authority under the Energy Regulation Act for the generation, transmission, distribution, importation or exportation of electricity;

“Load Dispatch Center” means the load dispatch center referred to in Sections 24 and 25.

“Rural Electrification” means grid or off grid extension of distribution lines and installation of solar photovoltaic systems, generation of electricity from mini -and micro-hydro whose internal rate of return is up to 6% per annum and line capacity is less than 66KV and/or generation capacity is up to 5MW;

“Supply” means the sale of electricity to customers;

“Supplier” means a person supplying electricity;

“Transmission” means the conveyance of electricity at 66,000 volts or more (or as may be prescribed by notice in the Gazette) from generators or import point to distributors or large customers or export point through a transmission power system, and the terms "transmit" and "transmitting" have corresponding meanings;

“Transmitter” means a person transmitting electricity.

PART II-LICENCES

Electricity supply
Activities to be
Carried on under
Licence

3.(1) No person shall carry on or be engaged in any manner in any activity for the supply of electricity, including the export of electricity from, and import of electricity into, Malawi, without a generation, transmission, importation, exportation or distribution licence, as the case may be, issued by the Authority

(2) The activities in the electricity supply industry for which a licence is required are-

- a) generation of electricity for sale;
- b) operation of a transmission network;
- c) operation of a distribution network for supply of electricity;
- d) Importation of electricity into Malawi; and
- e) Exportation of electricity out of Malawi..

(3) The Authority has the power-

- a) to determine whether any person is carrying on or engaging in any activity for the supply of electricity; and
- b) to order any person not holding a licence and who is required to apply for and hold a licence under this Act to cease carrying on or be engaged in any activity in the generation, transmission, importation, exportation or distribution of electricity.

Licensees to hold only
one type of licence

4. (1) No licensee shall be granted more than one type of licence as listed in section 3(2) above.

(2) Notwithstanding the provisions of subsection (1) a transmission licensee shall be entitled to apply for and be granted an importation licence and an exportation licence.

(3) Notwithstanding the provisions of subsection (1) a distribution licensee may apply for and be granted a licence for the exportation of electricity only if the exportation of electricity will be through a distribution line operated by the licensee.

(4) A licensee breaches this Section if he/she holds more than 5% shares in another company, which holds a licence under this Act.

Applications for licences

5. (1) Any person required to hold a licence under this Part shall apply to the Authority for a generation, transmission, exportation, importation or distribution licence, as the case may be.

(2) Separate applications shall be made and separate licences shall be issued under subsection (1) to the transmitter, importer and exporter.

Mode and procedure of
Application for licence

6.(1) Every application for a licence shall be made to the Authority and be advertised by the Authority at the expense of the applicant, in the prescribed manner.

(2) The application for the licence must be accompanied by-

- a) licence application fees as the Authority shall prescribe by notice;
- b) a schedule of the proposed tariffs which a licensee intends to charge customers.

(3) Any person may object to the issuing of the licence. Any such objection must be submitted to the Authority in the prescribed manner and time.

(4) The Authority shall consider an application in terms of subsection (1), and any objection thereto, and may for that purpose, arrange for a public hearing of the application at a suitable time and place of which not less than 14 days notice shall be given to the applicant and every objector.

(5) At a hearing in terms of subsection (4) the applicant and any objector may be represented by a legal practitioner and may lead evidence in support of the application or objection.

(6) Not later than thirty days after conclusion of a hearing in terms of subsection (4) or if no hearing was arranged, thirty days after the expiry of the period allowed for the submission of objections in terms of subsection (3), the Authority shall either grant or refuse the application for the issue of a licence.

(7) If an application for the issue of a licence is refused the Authority shall inform the applicant in writing of the reasons for the refusal.

(8) If an application for the issue of a licence is granted the Authority shall issue the licence in the prescribed manner and shall-

- a) specify the particular activity authorized by the licence;
- b) define the area in respect of which the licence is issued;
- c) contain or have attached to it any conditions imposed in relation to the licence in accordance with this Act;
- d) contain a schedule specifying the approved tariffs that may be charged by the licensee to its customers.

Criteria for consideration
of application for licence

7.(1) The Authority in considering the application for the issue, renewal, amendment or transfer of a licence shall give due consideration to matters or activities which may adversely affect, or result in damage to, the environment or the rights of others, weighed against the advantages in general that may be derived from the grant of the application.

(2) Without derogating from the generality of the provisions of subsection (1) the Authority may-

- a) request from the applicant, an environmental and social impact assessment study indicating the extent of any potential damage to or pollution of the environment or social disruption and the steps proposed to be taken by the applicant to prevent or minimize such damage or pollution and to restore the environment generally and in terms of existing environmental legislation;
- b) Request the applicant to submit details of the technical and economic-financial resources available to the applicant to execute the work, to operate the system in an effective efficient and safe manner and to carry on the business to which the application or licence relates, substantiated by documentary proof where applicable;
- c) Request the applicant to submit details of its shareholding structure and related business interests as would be material in terms of section 4 (4).
- d) Take into consideration the extent to which the activities of the applicant will or may be detrimental to or adversely affect the rights and operation of other licensees or their customers in their area of operation;
- e) Take into consideration the ability of the applicant to provide an effective service to customers;

Incomplete Premises

8.(1) If an application for a licence is made in respect of premises which still require work of a structural nature to be carried out, including the installation of plant and equipment, before operations under the licence can be commenced, the Authority may, upon approval of the plans in respect of such work, grant the licence subject to compliance with such conditions and requirements, and within such period, as the Authority may determine before the licence can be issued.

(2) The Authority shall in writing inform the applicant of the conditions and requirements imposed under subsection (1).

(3) The Authority may at any time, on application of the applicant concerned-

- a) withdraw or amend any condition or requirement referred to in subsection (1);
- b) extend or further extend the period referred to in that subsection;
- c) approve an amended plan in respect of the premises.

(4) When the Authority is satisfied that the premises referred to in subsection (1) have been completed in accordance with the approved plan thereof, the conditions and requirements have been complied with and the premises are suitable for the purpose for which they will be used under the licence, the Authority shall issue such licence.

(5) A licence granted in terms of subsection (1) shall lapse if it is not issued before the expiration of the period referred to in that subsection or any extension thereof under subsection (3)(b).

Conditions of a Licence

9.(1) A licence shall be subject to such conditions as may be prescribed under this Act.

(2) Without derogating from the generality of the power conferred by subsection (1) conditions prescribed under that subsection may include provisions relating to-

- a) implementation of environmental impact mitigation measures proposed by the licensee in his application;
- b) the obligation of the licensee, upon cessation of the activities carried on under the licence concerned, with regard to the destruction, dismantling or removal of any buildings, walls, installations, equipment, structures, waste dumps or other facilities erected or used for purposes of, or in connection with, those activities, whether on the premises of the licensee or elsewhere, and the restoration of any land disturbed by such activities;
- c) the furnishing by the licensee of acceptable security for compliance with any condition contemplated in paragraph (a) or (b) or acceptable security for compliance with duties of a licensee under this Act;
- d) lodging with the Authority of annual returns containing prescribed particulars.

Amendment or Revocation
of Licences

10.(1) Subject to section 11, the Authority may revoke or amend a licence or a condition of a licence -

- a) on application, or with the consent, of a licensee;
- b) upon material breach by the licensee of any of the conditions of the licence or the provisions of this Act, or the Energy Regulation Act, 2004; or
- c) If subsequent to granting of the licence it is discovered that information furnished in connection with that application was incorrect or incomplete in a material respect.

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(2) the provisions of section 6 shall apply *mutatis Mutandis* to application for amendment or revocation of a licence under subsection (1).

Breach of Conditions of licence
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11. If a licensee fails to comply with his licence, the conditions on No20 which it was granted or the provisions of the Energy Regulation Act, 2004 or this Act, or modifies the purpose for which the licence was granted, or fails to commence or complete any works required in his licence, the Authority may serve him a notice in writing requiring him to comply within such reasonable period as the Authority may determine, and where the licensee fails to comply, the Authority may-

a) call for any security provided by the licensee to rectify the breach where feasible;

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b) impose such penalties or sanctions as may be provided for under this Act or the Energy Regulation Act or the licensing conditions of such licensee which may include recovery in a court by the Authority from such licensee of any profit earned by the licensee as a result of the non-compliance;

c) amend the licence

d) revoke the licence or suspend the licence and appoint new managers, for a period not exceeding one year, to manage the operations of the licenced activity temporarily while conducting competitive bidding to identify a licensee to take over that licenced activity.

Duration and Renewal of Licences

12.(1) Unless sooner revoked under Section 10 a licence shall remain valid for such period as shall be prescribed in the licence which period shall not exceed

- (a) in the case of a generation licence, fifty years
- (b) in the case for transmission licence, thirty years
- (c) in the case of a distribution licence, twenty years; and
- (d) in the case of a licence to export or import electricity, thirty years

(2) A licensee may within a period of not less than twelve months before the date fixed for the termination of the licence, make application to the Authority for a renewal of such licence and the application shall be made in accordance with this Act.

(3) A licence shall be renewed if the Authority is satisfied that the licensee has acted in accordance with the terms and conditions of the licence and the provisions of this Act, and that renewal of such licence will further enhance the objectives of this Act.

Transfer of licence

13.(1) A licence may not be transferred or ceded to any other person, unless the Authority has granted approval therefor;

(2) An application for the transfer of a licence shall-

- a) be made by the licensee and proposed transferee jointly;
- b) be submitted to the Authority; and
- c) be advertised at the expense of the applicants, in the prescribed manner.

(3) Any objection to the transfer of a licence must be submitted to the Authority in the prescribed manner.

(4) The Authority shall consider an application in terms of subsection (1) and any objection thereto, and may for that purpose, at its discretion, arrange for public hearing of the application at a suitable time and place of which not less than fourteen days notice shall be given to the applicants and every objector.

(5) At a hearing in terms of subsection (4), the applicants and an objector may be represented by a legal practitioner and may lead evidence in support of the application or objection.

(6) Not later than thirty days after conclusion of a hearing in terms of subsection (4) or, if no hearing was arranged, thirty days after expiry of the period allowed for the submission of objections in terms of subsection (3), the Authority shall either grant or refuse the application for transfer.

Rural Electrification licensees

14. The Authority shall prescribe, by notice published in the *Gazette*, special and less onerous licensing regulations in respect of applications for rural electrification.

Register of licences

15. The Authority shall keep and maintain a public register of licences issued, including the following information-

- a) the terms and conditions of each licence; and
- b) such other information as may be prescribed or required under this Act.

PART III-TARIFFS

Licensees to charge only approved tariffs

16.(1) Subject to the provisions of this Part, a licensee shall not charge any customer any tariffs higher than those specified in the schedule of approved tariffs for his/her licence.

(2) The schedule of tariffs approved by the Authority under subsection (1) shall comprise-

- a) a base tariff determined in accordance with the principles laid down in section 18; and
- b) a tariff adjustment formula which takes into consideration exchange rate movement, consumer price index increases and other unavoidable cost increases and expected efficiency gains in the sector.

(3) The expected efficiency gains referred to in subsection (2) for distribution licensee shall include-

- a) technical and non technical losses;
- b) accounts receivables of not more than 60 days;
- c) connection rates; and
- d) customer-employee ratio.

The benchmarks of which shall be prescribed by notice in the *Gazette*.

(4) Any tariff adjustment in consequence of the formula in subsection (2) (b) shall be confirmed by the Authority before the licensee implements the same unless the Authority fails to confirm within ten days of application by a licensee:

Provided that no tariff adjustment shall be done if the increase is less than 5 percent.

(5) The Authority shall revise the base tariff and review the tariff adjustment formula referred to in subsection (2) for all licensees every four years, and at the end of the four years and before the Authority approves the new base tariff or new tariff adjustment formula for the next period the base tariff and respective tariff adjustment formula shall remain in force.

(6) Every licensee shall publish the approved tariff or any revision thereof in such manner as the Authority may prescribe.

Public hearing before
tariff revision

17.(1) Before revising the base tariff and the tariff adjustment formula accordance with section 16 (5) the Authority shall publish the proposed tariff revision and may cause tariff studies to be carried out.

(2) Any objection to the tariff revision must be submitted to the Authority in the prescribed manner and time.

(3) The Authority shall consider the objections and tariff studies in terms of subsection (1), and shall for that purpose, arrange for a public hearing of the tariff revision at a suitable time and place of which not less than fourteen days notice shall be given.

(4) At a hearing in terms of subsection (3) any objector may be represented by a legal practitioner and may lead evidence in support of the objection.

(5) Not later than thirty days after conclusion of a hearing in terms of subsection (3), the Authority shall either revise the tariff or leave it as it may be or modify the proposed revisions.

Criteria for granting
or revising tariffs

18.(1) The tariff of charges for new entrants or revision of tariff of charges provided under this Act shall be approved by the Authority and shall be set at levels sufficient to allow the licensee an opportunity to recover his costs of service, including a reasonable return on capital and encourage efficiency.

(2) In addition to the principles set in subsection (1), the Authority shall have regard to the following when setting or revising tariff of charges -

- a) Predictability of adjustments;
- b) financial sustainability of licensees;
- c) price stability;
- d) equity and fairness;
- e) cost of service;
- f) quality of service; and
- g) the value of the Malawi Kwacha in relation to foreign currencies.

PART IV-TRANSMISSION LICENSEE, POWER SALES AND PURCHASE CONTRACTS

Only one transmission Licence
to be issued

19. The Authority shall issue a transmission licence to only one transmission company for that transmission company to build, operate and maintain the Transmission network in Malawi.

Duties and Functions
of Transmission Co.

20. The duties and functions of the transmission licensee shall be *inter alia*,-

- a) to build, operate and maintain the transmission network in Malawi;
- b) To take into account the distribution expansion plans of the distribution licensees and plan the expansion of the generation and transmission systems including international connectors to meet forecast demand;
- c) To purchase power from the generation licensees and sell the power to distribution licensees;
- d) To import power into Malawi and to export power out of Malawi when feasible or necessary;
- e) To own the assets of and manage and operate the load dispatch center.

- Power Sales and Purchase contracts **21.**(1) In order to comply with their obligations to meet the total demand for electricity within their area of distribution, distributors shall sign electricity supply contracts with the Transmission Licensee at rates agreed upon between the parties and approved by the Authority.
- (2) All licensees shall sell or purchase bulk power through the transmission licensee.
- Import and export of power **22.** (1) The transmission licensee shall, under licence from the Authority, whenever there is need for additional generation capacity, consider purchase of power from other countries through international interconnectors.
- (2) The transmission licensee shall under license from the Authority, whenever there is excess generation capacity or reserve capacity when feasible, consider sell of power to other countries through international interconnectors.
- (3) Apart from the transmission licensee no other licensee shall be licenced to import or export power into and out of Malawi respectively: Provided that a distribution licensee may be licensed to export power out of Malawi if such export is through a distribution line, and provided further that export of power shall not affect the local capacity to meet the demand for power at any time.
- Wheeling of power **23.** The wheeling of power through the Malawi transmission system shall be in accordance with the principles of the Southern Africa Power Pool.
- Third party access **24.**(1) A Transmission licensee who is licensed to transmit electricity may not, upon the request of another licensee, refuse that licensee the right of transmitting electricity through its electrical or transmission line against payment of compensation at a rate approved by the Authority, except if such refusal is reasonably based on an insufficiency of technical availability of capacity.
- (2) For purposes of this section there is a rebuttable presumption that there is always available capacity in the transmission system until the contrary is demonstrated by the transmitter to the satisfaction of the Authority.
- (3) The tariff of charges charged by a transmission licensee shall be approved by the Authority which tariff must reflect cost of service and be non-discriminative.
- The Load dispatch Center **25.** The Transmission licensee shall own, manage and operate the Load Dispatch Center, which shall be responsible for coordination of generation, transmission, load dispatch and distribution in a non-discriminatory manner and at least cost in the interconnected system.

Functions and Reports of the
Load dispatch Center

26.(1) A transmission licensee shall, through the Load Dispatch Center be responsible for the following functions:-

- a) the planning and control of the daily of the integrated operation of the interconnected system to ensure satisfaction of demand through safe, reliable and low cost operation;
- b) the carrying out of load dispatch in real time at minimum cost;
- c) the determination of the actual power of generation units of the interconnected system;
- d) the determination of the valued balance of the movement of electricity resulting from the integrated operation of the system;
- e) the performance of such other duties incidental to and connected with the objective of the load dispatch Center.

(2) The Transmission licensee shall submit periodic reports to the Authority in respect of each of the functions in subsection (1).

PART V-GENERATION

Requirements of the Load
Dispatch Center

27. All generators are required to comply with the requirements of the load dispatch Center and shall deliver their generation to the said Center for load dispatch.

Transmission or distribution
licensee not to own
generation station

28. No transmission licensee or distribution licensee shall be licenced to build, own or operate and maintain a generation station for sale of power whether for firm or standby purpose.

Competitive tender for
new generation Capacity

29.(1) Whenever the Transmission Licensee decides that there is need for a new generation facility it shall prepare and request the Authority to issue a public tender for the required generation facility:

Provided that the preparation and issuance of a public tender shall not preclude any person from applying for a licence to install or construct a generation facility as he deems fit.

- (2) The tender issued under subsection (1) shall specify –
- a) the terms and conditions of the generation licence that is proposed to be issued as a result of the tender;
 - b) the qualifications that bidders must demonstrate to be eligible to participate in the tender;
 - c) the timetable for the tender and for subsequent generation licence award;

- d) the criteria by which the result of the tender will be determined; and
- e) any fees that may be payable at any stage by bidders participating in the tender.

Generators to sell power to
transmission licensee

30. All generators must sign power sale agreements with the transmission licensee for sale of their power at a price to be agreed between the parties but approved by the Authority.

PART VI-DISTRIBUTION

Duties of Distributor
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31. Subject to the terms and conditions of a licence issued in accordance with this Act and the Energy Regulation Act, 2004, every distributor shall supply electricity to every consumer who is in a position to make satisfactory arrangements for payment under a contract of supply with that operator.

Delays in Supply

32. Where a distributor unduly or refuses to supply any applicant with electricity, the applicant may appeal to the Authority, which shall determine the conditions under which the distributor shall undertake such supply.

Standby Supply

33. A consumer shall not be entitled to a standby supply of electricity from the distributor in respect of any premises unless that consumer has agreed to pay and has given security to pay, such minimum annual sum as will give to the distributor a reasonable return (which return will be determined by the Authority) on any capital expenditure and any other standing charges which may be incurred in meeting the maximum demand for the premises.

Customer's Installation testing

34. A distributor shall test any installation of an applicant before a supply of electricity:
Provided that the testing of such installation shall not render the operator liable in law for any damages or injury flowing from defective installations of applicants.

Interference with Licensee's system

35. A customer shall ensure that the operations of his/her system does not interfere with the smooth and safe operation of the Licensee's system to which he/she is connected.

PART VII-INSPECTION, ACCIDENTS, INQUIRIES AND INVESTGATIONS

Entry and inspection of premises
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36. The Authority, or any person authorized by it in writing, may at all reasonable times enter any premises or any licenced activity for the purpose of ascertaining whether or not the provisions of this Act or the Energy regulation Act, 2004 or the conditions of any licence are being complied with, or for the purpose of any inspection which is incidental to or connected with the carrying out of the duties of the licensee.

Licensee to report accidents

37. (1) A licensee shall send to the Authority notice of any accident of such a kind as to have caused, or likely to have caused, loss of life or serious personal injury which has occurred in any part of such licensee's works or equipment, together with notice of any loss of life or serious personal injury occasioned by any such accident.

(2) Nothing contained in subsection (1) shall absolve the licensee from the duty of complying with the provisions of any other written law relating to the reporting of accidents.

Inquiries and Investigations

38. (1) The Authority may, at its own instance or on receipt of a complaint or inquiry relating to the supply of electricity, appoint any person to make inquiries in respect thereof and report thereon to the Authority.

(2) On receipt of a report under subsection (1), the Authority may -

- (a) issue such notice, licensing conditions, guidelines, or directives as it is empowered to do under this Act or the Energy Regulation Act, 2004; or
- (b) institute a formal investigation.

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(3) The Authority shall on receipt of a complaint regarding unlawful conduct by a licensee, institute a formal investigation in respect of that complaint.

(4) Upon instituting a formal investigation under subsection (2) or (3) the Authority may appoint any person to chair the investigation and as many persons as may be necessary to assist with the investigation; and the person so appointed and the persons assisting him may summon witnesses and conduct the investigation in accordance with the procedure the Authority shall publish in the *Gazette*.

(5) On completion of the investigation under subsection (4) the person chairing it shall submit his written report thereon to the Authority.

(6) On receipt of the report under subsection (5), the Authority -

- (a) may refer it to the Attorney-General for his consideration;

(b) if a licensee is involved-

- (i) may issue notice, licensing conditions, guidelines, or directives as it is empowered to do or make under this Act or the Energy Regulation Act, 2004; or
- (ii) may amend or revoke the licence of that licensee in accordance with this Act or the Energy Regulation Act 2004.

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- (c) Shall give a copy of the report to a concerned customer/consumer or affected person who requests for it.

PART VIII-RIGHTS OVER LAND

Wayleaves over land
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39. (1) Subject to the Public Roads Act, a licensee may, for the purpose of the construction, maintenance, carrying on or extension of any of its works, place, lay down or carry any transmission line or distribution line or water pipe line or other equipment through, over or under any land whatsoever:

Provided that the licensee shall not, without the consent of the owner, be entitled under this section to interfere with any existing building.

(2) A licensee shall, not less than thirty days before placing, laying down or carrying any transmission line, or distribution line water pipe line or other equipment through, over or under any land without the consent of the owner, lessee or occupier of such land, give notice of the intended work either by notice published in the *Gazette* or in a paper in general circulation.

(3) Every notice referred to in subsection (2) shall-

- a) describe the nature of the intended work;
- b) describe the name of the place where the plan of the intended work shall be open for inspection during normal hours of business; and
- c) be served on any person resident in Malawi whose place of residence is known to the licensee, its staff or agents, and who is known or believed to be the owner, lessee or occupier of any land through, over and under which it is intended that any transmission or distribution line, water pipe line or other equipment shall be carried.

(4) If the place of residence of any person who is believed by the licensee, its officers, servants or agents to be the owner, lessee or occupier of any land is not known to the licensee, its staff or agents, or if for any reason it is not possible to effect service of the notice upon such persons, then, or in either of those events, the licensee shall cause such notice, or a true copy thereof, to be posted in a conspicuous position upon such land.

(5) If the owner, lessee or occupier of any land through, over or under which it is intended that any transmission line or distribution line water pipeline or other equipment shall be placed, laid down or carried, objects to the intended work and shall have served notice in writing of such objection at the office of the licensee at any time within the period of thirty days referred to in subsection (2), the intended work, in so far as it affects the land of the person serving such notice of objection, shall not be commenced unless the Authority approves the commencement of the intended work notwithstanding such objection.

(6) Where any notice of objection is given in accordance with subsection (5), the Authority may appoint such person or persons as it may think fit to make inquiry into the necessity, propriety or desirability of the intended work, and into the objections made thereto, and to report to the Authority in respect of those matters and on receiving the report of such person or persons, the Authority may make a decision either to allow the intended work, with such modifications, if any, or disallow the intended work, as it may deem necessary.

(7) Nothing in this section shall authorize or empower the licensee to lay down or place any transmission line or distribution line water pipeline or other equipment in, through or against any building, or in, on or through any land covered with buildings, without the consent of the owner, lessee or occupier thereof, so however that any overhead line and any support, stay, strut or structure required for the sole purpose of supporting any overhead line may be placed in, on, through or over any land or against any building with the consent of the Authority if, in his opinion, the consent of such owner, lessee or occupier is being unreasonably withheld, and in any such case, the Authority shall determine the amount of compensation, whether by way of payment of a lump sum or an annual rental, or of both, to such owner, lessee or occupier.

(8) If the owner, lessee or occupier of any land in, on, through or over which any transmission line or distribution line, water pipe line or other equipment is placed, laid down or carried, or, in the case of a street, the local or other authority concerned, shall require and request that the position of such transmission line or distribution line, water pipe line or other equipment be changed, the Authority may, by notice in writing, order the licensee to alter the position of such transmission line or distribution line, water pipeline or other equipment, subject to such conditions as, in the absence of agreement between the parties, may be specified by the Authority.

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

Right of entry on land

40.(1) Any member, or staff or agent of the licensee, duly authorized in that behalf by the licensee, and any contractor executing any work for the licensee together with its agents and staff may, on giving to the occupier such notice as, having regard to all the circumstances of the case, is reasonable, enter upon land at any time between the hours of six o'clock in the forenoon and six o'clock in the evening for the purpose of surveying, setting out and marking the line of any intended transmission line or distribution line, water pipe line or other equipment.

(2) It shall be lawful for the licensee or any person in that behalf duly authorized by the licensee in writing any time between the hours of six o'clock in the forenoon and six o'clock in the evening, or, in the case of emergency, at any other time, to enter into and upon any premises, through, or under which the licensee has placed a transmission line or distribution line, water pipe line or other equipment, in order to perform and carry out the licensee's purpose on such land or premises, or to maintain, remove, repair or replace any such transmission line or distribution line, water pipe line or other equipment or carrying out any works urgently needed to be done in relation thereto.

Trees or buildings interfering with electricity supply and equipment

41.(1) Where, on any land, trees or undergrowth of any kind obstruct or interfere with the construction, working or supply and maintenance of any transmission line, distribution line, water equipment pipe line or other equipment, the licensee may give to the owner, lessee or occupier of the land upon which such trees or growth are situated not less than fourteen days' notice in writing of its intention to enter upon the land and to cut down or to trim such trees or growth, and after the expiry of the time limit in the notice, may enter upon the land and effect such notified intention.

(2) The owner, lessee or occupier, on receiving notice in accordance with subsection (1), may at his own expense and at any time before the expiry of the time limit in the notice, but in consultation with the licensee to ensure safety, cut down or trim the trees or undergrowth so as to comply with the requirements of the licensee in that regard.

(3) Notwithstanding the provisions of subsection (1) and after taking such immediate action which is essential in order to protect any transmission line, distribution line, water pipe line or other equipment from damage by any trees or undergrowth on any land, the licensee may without any notice to the owner, lessee or occupier, enter upon such land and cause such trees or undergrowth to be cut down or trimmed in such a manner as may be necessary to prevent the anticipated or other damage.

(4) Except with the permission of the licensee, no person shall erect any building or structure in the wayleave or in such a position or in such a manner as to be likely to interfere with the supply of electricity through any transmission line or distribution line and, if, after a transmission line or distribution line has been constructed, any person erects any building or structure in the wayleave or in such a position or in such a manner as to be likely to interfere with the supply of electricity through such transmission line or distribution line, the licensee may request such a person to remove or adjust such a building or structure as may be necessary; and if such person fails or omits to comply with such a request, the licensee may apply to the Authority for an order for the removal or adjustment of the building or structure and, after such inquiry as it may deem necessary, the Authority may make such order as it deems fit.

(5) No person, owner, occupier or lessee shall grow trees or undergrowths or allow trees or undergrowths to grow or to be grown on the land he owns, occupies or leases in such a manner as to be likely to interfere with the supply of electricity through any transmission or distribution line of the licensee.

Breaking up of streets

42.(1) Subject to subsection (2), where the licensee has acquired the right to place the transmission line or distribution line across, under or along any street either in accordance with the Act or any other written law, the licensee may breakup any street in which such right has been acquired and may from time to time as may be necessary repair, alter or remove any such lines.

(2) Before the licensee exercises any power conferred by this section, it shall give to the local or other authority concerned and to respective owners of all water pipes, telephone cables or other installations at least thirty days notice in writing of its intention to exercise such power:

Provided that in any case of emergency, the licensee shall give notice thereof to such authority and to respective owners of all water pipes, telephone cables or other installations, as soon as is practically possible after the emergency has arisen.

(3) Except in cases of emergency, the powers conferred by this section shall only be exercised under the superintendence of the local authority or other authority concerned, and according to such specifications and such plan showing the route along which the transmission lines or distribution lines are to be erected as may be approved by that authority, or if any difference arises with regard to the specification, plan or route, then according to such specification and such plan as may be approved by the Authority:

Provided that if the authority concerned fails, within reasonable time, to exercise the powers of superintendent conferred by this section, after such notice shall have been given to the authority, then the licensee may exercise those powers without superintendent of the authority.

(4) Every licensee that carries out any work authorized by this section shall -

- a) comply with the relevant by-laws and regulations of the local or other authority concerned;
- b) complete the work with reasonable dispatch;
- c) reinstate and make good the street opened or broken up in the course of such work and remove therefrom all material remaining as a result of the work;
- d) leave the street in all respects in a clean and tidy state; and
- e) cause all works to be at all times properly fenced and guarded and to be adequately marked with warning lights during the hours of darkness while the street is in the course of being opened, broken up or obstructed.

(5) If a licensee fails to comply with subsection (4), the local authority or other authority concerned may cause to be carried out, at the expense of the licensee, any work necessary for the due discharge of that duty.

Licensees' equipment not part of land

43. Any lines, meters, fittings, works or apparatus belonging to a licensee and lawfully placed or installed in or upon any premises not in his possession shall, whether or not fixed to any part of such premises, remain the property of and may be removed by the licensee, and are not 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.

Compensation for damage caused by licensee

44. (1) The licensee shall make good to the reasonable satisfaction of the local or other authority, or the owner, as the case may be, of all public and private roads, streets and paths opened or broken up by the licensee in the course of its operations and shall also pay fair and reasonable compensation or rent or both for all losses or damage caused in the execution of any of its powers conferred by this Act .

(2) Where a dispute arises as to whether any road, street or path has been adequately made good, or as to the amount of compensation or annual rent to be paid under subsection (1), such dispute shall be referred to a Resident Magistrate having jurisdiction in the District in which the cause of the dispute arose and for that purpose the Resident Magistrate shall have jurisdiction in all of such disputes irrespective of the amount of compensation or rent involved and may make such award as he deems fair and reasonable to the person who is found to be entitled thereto.

(3) Either party to the dispute may appeal from the decision of the Resident Magistrate to the High Court.

PART IX-OFFENCES AND PENALTIES

Offences

45. (1) Any person who carries on in any manner any activity For the supply of electricity in contravention of this Act, or fails to carry out any order or decision of the Authority made or given under this Act or otherwise contravenes the provisions of this Act, shall be guilty of an offence.

(2) Without prejudice to the right of a licensee to recover for any illegal consumption of electricity, including costs associated with such recovery, a customer or any other person who

- a) illegally connects electricity to any premises;
- b) disturbs or tampers with any electricity meter or other measuring instrument or apparatus;

- c) denies access to premises for inspections by authorized personnel of the licensee or the Authority; or
- d) damages or vandalises any electricity installation equipment or apparatus,

shall be guilty of an offence.

(3) Any transmitter who denies access on his system to licensees shall be guilty of an offence.

Penalties

46. Any person who is guilty of an offence under this Act shall be liable to a fine of K5,000,000 and to imprisonment for ten years.

PART – X-MISCELLANEOUS PROVISIONS

Consumer and Customer
education brochures

47. The Authority shall develop and publish an information brochure and other modes of communication for consumer/Customer education on the structure and price regulation or on technical, safety and legal aspects of the electricity supply industry.

Resolution of disputes by
the Authority

48.(1) The Authority shall, if requested by a party to a dispute, act as a mediator or arbitrator in disputes between licensees or between a licensee and its customer or a licensee and the Co-ordination Center relating to-

- a) the right to supply electricity;
- b) the duty to supply electricity;
- c) the tariffs and charges at which electricity is applied;
- d) delays in or refusal to supply electricity; and
- e) the quality of electricity supply and the provision of services in connection therewith.

(2) The Authority may act as mediator or arbitrator in any matter in respect of which a licensee or customer requests the Authority to act as such.

(3) The Authority may, on approval of the parties involved, appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a person so appointed shall be deemed to be an action by or decision of the Authority.

(4) The Authority shall prescribe and publish in the *Gazette* the procedure to be followed and arbitration fees to be paid in arbitrating a dispute and the decision of the Authority, shall be binding on the disputing parties, subject only to the right of each party to appeal to the High Court as provided in this Act.

Service of notice

49. Any notice or other document required or authorized to be given, delivered or served under this Act may be given, delivered or served -

- (a) by delivering it to the person to whom it is to be given or delivered or on whom it is to be served;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode or postal address;
- (d) in the case of company, by delivering it to the secretary or clerk thereof at its registered or numbered office or by sending it in a prepaid registered letter addressed to the secretary or clerk of the company at that office; or
- (e) if it is not practicable after reasonable enquiry to ascertain the name or address of a person to whom it should be given or delivered or on whom it should be served, as being a person having an interest in land, being the person to whom by the description of the person having that interest in the premises (naming those premises) to which it relates, or by delivering it to some person on the premises or, if there is no person on the premises to whom it can be addressed, by affixing a true copy of it to some conspicuous part of the premises.

Licensee may discontinue Supply
for non-payment, etc

50. (1) A licensee shall not vary or discontinue a supply, which is to be constantly maintained except -

- a) for causes beyond the control of the licensee; or
- b) where the customer has failed to pay charges lawfully due in accordance with the conditions of supply or any written law, as the case may be; or
- c) where the customer has failed to comply with the conditions of supply or any written law and failed to remedy his default within seven days of receiving written notice from the licensee calling upon him to do so;

(2) A licensee may temporarily vary or discontinue a supply of electricity (1) -

- a) without prior notice to a customer likely to be affected –
 - (i) where such action is necessary to prevent danger to life or damage to property;

(ii) in any emergency, from whatsoever cause arising, to ensure the proper working of the licenced activity or of any other licenced activity with which it is interconnected;

(iii) by the automatic operation of a protective device installed to disconnect supply of electricity in fault conditions; or

(iv) by the automatic or hand operation of a device installed to disconnect a supply of electricity in terms of the conditions or agreement to supply; or

(b) on giving not less than twenty-four hours notice -

(i) for the purposes of making alterations or additions to a system;

(ii) for normal maintenance work; or

(iii) for testing a device referred to in paragraph (a) (iii) or (iv).

Right of appeal to the High Court

51. (1) Any person aggrieved by the decision or action of the Authority under this Act may appeal to the High Court by way of petition and lodged within three months from the date of the decision or action of the Authority.

(2) The Chief Justice may make such rules as he considers proper in relation to the procedure on the hearing of such appeals, including the appointment and remuneration of assessors and regulating the costs of the appeal.

By-laws

52.(1) The Authority may make by-laws to give effect to this Act or for its better administration and shall publish a draft of the proposed by-laws for comment by members of the public or licensees and shall consider any comments given before putting such by-laws into effect.

(2) The safety and technical codes to be promulgated by the Authority under subsection (1) for distribution licensees shall apply to rural electrification schemes.

Repeal and savings

Cap 73:01

53.(1) Subject to subsection (2), the Electricity Act, 1998 is hereby repealed.

Cap 73:01

(2) Anything done in accordance with the Electricity Act repealed by section (1), prior to the commencement of this Act and which may be done in accordance with provisions of this Act shall be deemed to have been done in accordance with this Act.

Cap 73:01

(3) Any subsidiary legislation made or deemed to have been made under the Electricity Act, 1998 repealed by subsection (1) in force immediately before the commencement of this Act -

- a) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act;
- b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Cap 73:01

(4) All licences issued by the Electricity Council in accordance with the Electricity Act, 1998 repealed by subsection (1), prior to the commencement of this Act, if not in conflict with the provisions of this Act, shall be deemed to be licences granted by the Authority in accordance with this Act.

Passed in Parliament this nineteenth day of March two thousand and four