

REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**BILLS 2004**

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**NAIROBI, 20<sup>th</sup> July 2004**

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**Bill for introduction into the National Assembly-**

**The Energy Bill, 2004**

**THE ENERGY BILL, 2004**  
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## **A Bill for**

An Act of Parliament to amend and consolidate the law relating to the generation, transmission, transformation, distribution, supply and use of electrical energy; the importation, exportation, transportation, refining, storage and sale of petroleum; the regulation and development of other energy sources; the establishment of the Energy Regulatory Commission, the Rural Electrification Authority and the Energy Tribunal; the repeal of Electric Power Act, No 11 of 1997 and of the Petroleum Act (Cap 116); and for connected purposes.

**Enacted** by the Parliament of Kenya as follows:

### **PART I: PRELIMINARY**

#### **Citation**

1. This Act may be cited as the Energy Act, 2004.

#### **Interpretation**

2. (1) In this Act, unless the context otherwise requires-

“Act” includes any subsidiary legislation made thereunder;

“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, vessels;

“Commission” means the Energy Regulatory Commission established under section 5 of this Act;

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

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

“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, solar, wind and tidal wave power;

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

“licensee” means holder of a licence;

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

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

“open tendering system” means a system of competitive bidding as provided in the legal notice No. 51 of 2001.

“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;

“Permanent Secretary” means the Permanent Secretary to the Ministry for the time being responsible for energy;

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

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

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

“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 a 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 lightning, fire, earth quakes, volcanic activities, floods, severe drought, storms, cyclones, typhoons or tornadoes;

(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;

“regulation” means a regulation made under this Act;

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

“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;



“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 production, generation, transmission, distribution or 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;

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.

"undertaker" shall be construed accordingly;

“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 generation, transmission, transformation, distribution supply or 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 extraction, 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 production, transportation, distribution and supply of any other energy form.

(2) In this Act, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any government agency;
- (d) any reference to a numbered subsection is a reference to the subsection bearing that number in the section in which the reference occurs, and
- (e) a reference to any thing includes a part of that thing.

### **Application of Act**

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

## **Powers of the Minister**

4. (1) The Minister shall be responsible for-
- (a) policy relating to the energy sector;
  - (b) the appointment of Commissioners of the Energy Regulatory Commission, members of the Rural Electrification Authority, and members of the Energy Tribunal;
  - (c) the nomination of persons from the Energy Sector to be members of the Disaster Preparedness and Management Committee;
  - (d) the imposition of levies under this Act;
  - (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 any public 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.
- If any doubt arises as to the existence of a public emergency or whether any act done under this subsection was in the interest of the public safety, a certificate signed by the Minister shall be conclusive proof on the point.
- (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 provided that such directions shall not unduly interfere with the performance of the functions and exercise of powers of the Commission under this Act.
- (4) The Minister may from time to time require the Commission in writing to furnish him with such information and statistics in such form and manner as he may prescribe.

## **PART II: ENERGY REGULATORY COMMISSION**

### **Establishment of the Commission**

5. (1) There is hereby 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 be capable of suing and being sued in its corporate name and of doing all such other things as a body corporate may lawfully do.
- (3) Subject to the provisions of this Act, the Commission shall not be subject to the direction or control of any person or authority in the performance of its functions.
- (4) The Commission shall be the successor to the Electricity Regulatory Board established by the Electric Power Act, No 11 of 1997 (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 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 Commission established under subsection (1).

### **Objectives of the Commission**

6. The objectives of the Commission shall be the-

- (a) regulation of generation, transmission, transformation, distribution, supply and use of electrical energy;
- (b) regulation of importation, exportation, transportation, refining, storage and sale of petroleum;
- (c) regulation and development of other forms of energy; and
- (d) protection of consumer, investor and other stakeholder interests.

### **Functions and powers of the Commission**

7 (1) The functions of the Commission are to-

- (a) issue, modify, suspend and revoke licences and permits for all undertakings and activities in the energy sector;
- (b) advise the Minister on the formulation of policy on, and the development of, the energy sector;
- (c) monitor, ensure implementation of, and the observance of the principles of fair competition in the energy sector, in coordination with other statutory authorities;
- (d) develop and manage, in consultation with the Minister, a national energy conservation programme;
- (e) formulate and coordinate, in consultation with the Minister, a disaster preparedness plan for the energy sector;
- (f) formulate, enforce and review environmental, health, safety and quality standards for the energy sector, in coordination with other statutory authorities;
- (g) formulate, enforce and review regulations, codes and standards for the energy sector
- (h) provide such information and statistics to the Minister as he may from time to time require; and
- (i) perform any other functions that are incidental or consequential to its functions under this Act or any other written law.

(2) The Commission shall have the power to-

- (a) 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;
- (b) approve electric power purchase and network service contracts for all persons engaging in electric power undertakings;

- (c) prescribe the form and manner in which any application for a licence or amendment thereof or objection thereto shall be made and the fees payable in respect of any such application;
  - (d) prescribe the conditions which may be attached to the grant of licences;
  - (e) make and enforce directions to ensure compliance with conditions of licenses issued under this Act;
  - (f) examine and certify meters used or intended to be used for ascertaining the quantity of the electrical energy;
  - (g) investigate and determine complaints or disputes between parties with grievances over any matter required to be regulated under this Act;
  - (h) impose sanctions, impose and collect penalties on persons who are in breach of any provision of this Act or any regulation thereunder; and
  - (i) without prejudice to the powers of the Attorney General, institute proceedings in respect of any offence committed under this Act;
- (3) In the discharge of its functions and exercise of its powers, the Commission shall ensure that no particular person is given undue preference or subjected to any undue disadvantages.
- (4) No Commissioner or staff of the Commission shall be personally liable for any act or default, done in good faith in the exercise or purported exercise of the functions of the Commission.

### **Seal and execution of documents**

- 8 (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 signified under the hand of the Director General or any other Commissioner authorised by the Commission, and the Commission Secretary.
- (3) Every instrument or document purporting to be an instrument or a document issued by the Commission and sealed in the manner provided by subsection (2) shall be deemed to be such an instrument and shall be received in evidence without further proof.

### **Composition of the Commission**

- 9 (1) The Commission shall consist of the following Commissioners-
- (a) A Chairman appointed by the President;
  - (b) The Permanent Secretary;
  - (c) The Director General appointed by the Minister;
  - (d) Five other Commissioners appointed by the Minister as follows:
    - (i) two Commissioners to represent the private sector in general;

- (ii) three Commissioners each appointed from a panel of three (3) nominees submitted by each of the national bodies for the time being recognized by the Government as representing organizations for:
    - (aa) workers;
    - (bb) employers; and
    - (cc) manufacturers.
- (2) The Permanent Secretary may depute an officer from his Ministry or department to sit on the Commission on his behalf.
- (3) The Commissioners, except the Permanent Secretary or the officer deputed to represent him, shall be persons with a university degree and not less than fifteen (15) years practical experience in matters related to engineering, law, finance, economics or energy.
- (4) (a) The Chairman shall hold office for a term of four years and shall be eligible for reappointment for a further term of three years, while the Commissioners other than the Director General shall hold office for a term of three years after which they shall be eligible for reappointment for a further term of three years.
  - (b) The Chairman and Commissioners described in (a) above shall serve on the Commission for a maximum of two terms.
  - (c) The Permanent Secretary or the officer deputed to represent him shall hold office as long as they hold the offices by virtue of which they are Commissioners.
- (5) The Commissioners shall be appointed in such a manner that the respective expiry dates of their terms of office may fall at different times.

### **Director General**

- 10. (1) The Director General shall be a person with a university degree and not less than fifteen (15) years practical experience in matters related to engineering, law, finance, economics or energy.
- (2) The Director General shall hold office for a term of four years and shall be eligible for reappointment for a further term of four years.
- (3) The Director General shall, subject to this Act and to the directions of the Commission on matters of policy, be the chief executive officer of the Commission and responsible for the day to day management of the Commission and implementation of the decisions of the Commission.

### **Termination of appointment of Commissioners**

- 11. The appointment of a Commissioner, other than the Permanent Secretary or the officer deputed to represent him, shall be terminated on the advice of the Commission, in the case of the Chairman, by the President, and in the case of any other commissioner, by the Minister, if the Commissioner-
  - (a) is unable to perform the functions of his office by virtue of mental or physical infirmity;
  - (b) is declared or becomes bankrupt;

- (c) is convicted of a criminal offence involving dishonesty, fraud or moral turpitude;
- (d) is absent from three consecutive meetings of the Commission without reasonable cause to the satisfaction of the Commission in consultation with the Minister; or
- (e) in any particular case fails to comply with the provisions of subsection 16 (7) of this Act.

### **Commission Secretary and Directors**

12. (1) There shall be a Commission Secretary appointed by the Commission from among persons with a university degree in law, who are certified public secretaries and not less than fifteen (15) years relevant experience, who shall-
- (a) be secretary and general counsel 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 assign to him.
- (2) The Commission shall appoint from among persons with a university degree and not less than fifteen (15) years practical experience in matters related to engineering, law, finance, economics or energy as directors who shall be:
- (a) Director of Electricity to be responsible for electrical energy matters;
  - (b) Director of Petroleum to be responsible for petroleum matters; and
  - (c) such other directors to be responsible for such other key functions as the Commission may from time to time determine.

### **Inspectors and other employees**

13. For the efficient discharge of its functions, the Commission shall engage:
- (a) such number of inspectors whose duties shall be the inspection and testing, periodically and in special cases, of all undertakings and operations regulated under this Act to ensure compliance with this Act, and where there is non-compliance, such inspectors shall, without prejudice to the powers of the Attorney General, have powers to institute proceedings against all persons not complying; and
  - (b) such other employees as may be necessary.

### **Remuneration**

14. The Commission shall pay to its Commissioners and employees salaries and allowances at rates comparable to those obtaining in other public sector institutions performing similar regulatory functions.

### **Delegation of powers**

15. (1) The Commission may by resolution delegate any of its power to any public authorities or to any committees or agents appointed in accordance with section 23 of this Act.
- (2) No delegation of any power under subsection (1) shall preclude the exercise of such power by the Commission.
- (3) The Commission may by resolution at any time amend or cancel a delegation made under subsection (1).

### **Meetings and procedure of the Commission**

16. (1) The Commission 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.
- (2) The Chairman shall preside at every meeting of the Commission and in his absence the Commissioners present may appoint a Commissioner from among themselves to preside at that meeting.
- (3) The Chairman or, in his absence a Commissioner appointed by the Commission to act in his place, may at any time call a special meeting upon a written request by a majority of the Commissioners.
- (4) Unless five (5) Commissioners otherwise agree, at least seven days' written notice of every meeting of the Commission shall be given to every member of the Commission.
- (5) 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 chairman or the person presiding shall have a casting vote.
- (6) Any Commissioner, or an officer of the Commission instructed by the Director General in that behalf, 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 or that officer, is contrary to his advice or contrary to law.
- (7) A Commissioner who has a direct or indirect personal 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 by the Commission to take part in decision of the Commission on the matter.
- (8) 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 Chairman or the person presiding at the meeting.
- (9) Subject to subsection (7), five (5) Commissioners shall constitute a quorum for the conduct of business at any meeting of the Commission.

- (10) 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 subsection (6) of this section from the deliberations on the matter in which he has disclosed a personal interest, the other Commissioners present may, if they deem it expedient to do so:
- (a) Postpone the consideration of that matter until there is a quorum without that member, or
  - (b) Proceed to consider and decide the matter as if there was quorum.

### **Funds of the Commission**

17. (1) The funds of the Commission shall consist of:
- (a) levies which the Minister may impose as funds of the Commission 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 acceptable to the Minister; and
  - (c) such moneys as may from time to time be appropriated by Parliament.
- (2) Approval of the Budget of the Commission shall be made by the Minister after due consultations with the Minister responsible for finance.

### **Books, accounts, records audits and reports**

18. (1) The Commission shall keep or cause to be kept proper books recording all the property, 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 property and liabilities under this Act.
- (3) The accounts of the Commission shall be audited in accordance with the provisions of the Exchequer and Audit Act.
- (4) The expenses of and incidental to the auditing of the accounts of the Commission shall be borne by the Commission.
- (5) The Commission shall within six months after the close of each financial year submit to the Minister a report of its operations and activities throughout the year, with audited accounts 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.

### **Power to make regulations**

19. (1) The Commission may, on its own motion and/or following proposals by any licensee, person or body of persons, consumer(s) or public or local authorities, 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) All such regulations may impose conditions, require acts or things to be performed or done to the satisfaction of the Commission, empower the Commission to issue provisional or final orders in writing requiring acts or things to be performed or done, 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 such conditions shall be fulfilled.
- (3) A regulation or order 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 Commission deems fit, and may contain such supplemental and consequential provisions as the Commission considers necessary for giving full effect to the regulation or order.

### **Procedure for making regulations**

20. (1) Before making any regulations under this Act, the Commission shall-
  - (a) consult with the relevant licensees and stakeholders and shall consider any representations that will be made by any licensee, stakeholder or person in regard to the proposed regulations;
  - (b) publish, in such manner as it may deem best adapted for informing the person(s) affected, notice of the proposal to make, amend or repeal any regulations and of the place where copies of the draft regulations may be obtained, and of the time (which shall not be less than twenty-eight days) within which any objection made with respect to the draft regulations by or on behalf of persons affected must be sent to the Commission.
- (2) Every objection must be in writing, and state:
  - (a) the draft regulations or portions of such regulations objected to;
  - (b) the specific grounds of objection; and
  - (c) the omissions, additions or modifications proposed.
- (3) The Commission shall consider any objection made by or on behalf of any person which is sent to it within the required time, and it may, if it deems fit, amend the draft regulations.
- (4) Where the Commission has received an objection to any draft regulation, it may, provided the objection does not appear to it to be frivolous, immaterial or opposed to the public interest, before making the regulation, direct an inquiry to be held in the manner hereinafter provided.

### **Inquiries on proposed Regulations**

21. (1) The Commission may, or may appoint a competent committee or person to, hold an inquiry with regard to any draft regulations.
- (2) The inquiry shall be held in public and any objector or other person who, in the opinion of the Commission, committee or person holding the inquiry is affected by the draft regulations, may appear at the inquiry either in person or by agent.
- (3) Any witness at the inquiry may, if the Commission, committee or person holding the inquiry deems it fit, be required to make his statement on oath.

- (4) Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with procedure prescribed by the Commission.
- (5) The Commission may pay such fees, allowances and expenses to members of the committee or person holding the inquiry as the Commission may determine, which payments shall be deemed to be part of the expenses of the Commission in the execution of this Act.

### **Commission to keep custody of regulations**

22. The Commission shall keep in custody all regulations for the time being in force.

### **Appointment of committees or agents**

23. (1) The Commission may appoint committees, whether of its own members or otherwise, or agents, as may be necessary or expedient for the better carrying out of the objects and purposes of this Act.
- (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.
  - (4) The Commission shall determine and pay such allowances and fees to the members of such committees and such agents.

### **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) take with him a police officer(s) if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;
  - (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 or any part of any book, notice, record, list or other document which appears to him to have relevance to his 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 take with him thereon such persons and such equipment as may appear to him to be necessary.
- (3) Where—
- (a) 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) Any 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 shall be guilty of an offence; and where the committee or agent is so obstructed in a premises the occupier of that premises shall be guilty of an offence.

#### **Licensee to furnish information and statistics**

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

#### **False information**

26. 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 punishable as provided under this Act.

#### **Secrecy of information**

27. No information relating to any matter obtained under section 24 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) any Minister responsible for, or any officer of, any department of Government;
  - (ii) any officer or authority having functions in relation to energy policy development or economic planning of petroleum business in Kenya;
  - (iii) any person for the purposes of legal proceedings; or
  - (iv) public institutions and bodies in consolidated form;
- (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**

28. 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 relating to any such purpose or to any such mode, material, or apparatus of the Kenya Bureau of Standards or where no such standard of the Kenya Bureau of Standards exists, any international standard approved by the Kenya Bureau of Standards, or in any case where the said specification or standard permits more than one mode, material or apparatus for any of the said purposes, or, in any case where no such specifications or standard has been made by the said Institution, as the Commission may by regulation prescribe in consultation with the Kenya Bureau of Standards.

### **Reporting of accidents and incidents**

29. (1) All persons engaged in any undertaking or activity pursuant to a licence or permit under this Act shall be required to 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.
- (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 licences fees and penalties**

30. (1) Any penalty, fine, fee, expenses or other moneys recoverable under this Act or a licence, the recovery of which is not otherwise specially provided for, shall be a civil debt recoverable summarily.
- (2) Amounts payable as penalties, fines and fees imposed by the Commission under this Act shall, unless otherwise specified, be paid to the Consolidated Fund.

### **Transfer of licence**

31. (1) A licensee shall not transfer or otherwise divest itself of any rights, powers or obligations conferred or imposed upon it by the licence without the consent of the Commission.
- (2) The Commission shall satisfy itself of the legal, technical and financial competence of the transferee to carry out the undertaking.
- (3) The transferee shall undertake in writing to comply with the licence conditions.
- (4) 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.
- (5) The Commission shall not withhold any consent to any application to transfer unless it has reason to believe that the public interest is likely to be prejudiced by the transfer.

### **Validity of licences and permits**

32. If, after a licence or permit to carry out any undertaking has been granted, 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, the licence or permit shall cease to have effect.

### **Revocation not to absolve a person**

33. Any revocation of a licence or permit granted to a person under this Act shall not absolve that person against the infliction of any penalties which the person may have become liable under the Act.

### **Domestic resources vested in the State**

34. All domestic natural resources for the production of energy not vested in Government through other Acts are vested in Government through this Act.

### **Offences by bodies corporate or their employees**

35. (1) An employee 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.
- (2) A person shall be personally liable for an offence under this Act, whether committed by him on his own account or as an agent or servant of another person.

## **Decisions of the Commission**

36. (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 compiled with within the time prescribed therein.

## **Appeals against decisions of the Commission**

37. A person aggrieved by a decision of the Commission may appeal to the Energy Tribunal within fourteen (14) days of the decision.

## **PART III – ELECTRICAL ENERGY**

### **Interpretation**

38. In this part of the Act, unless the context otherwise requires-

“apparatus” means electrical apparatus, and includes all machines; apparatus and fittings in which conductors are used or of which they form part;

“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 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.

“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, but does not include a person supplied with electrical energy for delivery or supply to another person.

“distribution” means the ownership, operation, management or control of distribution facilities for the movement or delivery of electrical energy to enable giving 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 be given to premises in that area;
- “distributing main” 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;
- “electrical energy” means energy involving the use of electricity, electric current or any like agency, 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 field 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;
- "electrical plant" means any plant, equipment, apparatus or appliance used for, or for purposes connected with, the generation, transmission, distribution or supply of electricity, other than:
- (a) an electric supply line;
  - (b) a meter used for ascertaining the quantity of electricity supplied to any premises or person; or
  - (c) an electrical appliance under the control of a consumer;
- "electric supply line" means any wire, conductor, line or other means used or intended to be used for the purpose of carrying, transforming, transmitting, distributing, serving or using electrical energy for any purpose and includes, unless the context otherwise requires:
- (a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;
  - (b) any apparatus connected to any such line for the purpose of transforming or carrying electricity; and
  - (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;
- “generating licence” means a licence authorising a person to generate electrical energy for own use or for supply to other licensees, large consumers or for export;
- “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;

- “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;
- “large consumer” means a consumer that contracts for purchase of electrical energy for his own use, in excess of amounts that may be prescribed by the Commission from time to time.
- “licence” means any document or instrument in writing granted under this Act, to any person authorizing the generation, transmission, distribution or supply of electricity in the manner described in such document or instrument, and includes;
- “licensee” means holder of a licence and excludes the holder of an electrical installation licence;
- “local generating licence” means any document or instrument authorizing a person to generate, distribute and supply electrical energy in the manner described in such document or instrument, in the area covered in such licence;
- “meter” means any instrument or device used for the measurement of the amount of supply or the number of hours during which the supply is given, or the maximum demand taken, or any other quantity or time connected with the supply, and includes such auxiliary appliances as resistors, shunts, reactances, current transformers, voltage transformers and time switches, external and necessary to the meter;
- “power” means electrical power or the quantity of electrical energy per unit of time;
- “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;
- “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;
- “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 the 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 50 of this Act;

“transmission” means the ownership, operation, management or control of transmission facilities, consisting (wholly or mainly) of high voltage electric supply lines for the movement of electricity in bulk between generating stations and transmission substations within Kenya, or connecting the Kenyan grid with grids outside Kenya, for the purpose of enabling the giving of 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 Kenyan grid;

“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;

### **Regulations for electrical energy**

39. (1) Without limiting the generality of sections 7 and 19 of this Act, and in accordance with sections 20 and 21 of this Act, the Commission may make regulations which may be necessary or expedient for the achievement of the objectives and purposes of this Act for all or any of the following purposes-
- (a) prescribing the form and manner in which any application for review or adjustment of tariff is to be made and procedure for tariff review or adjustments;
  - (b) providing the procedure to invite applications for licences and procedure for 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 of income and expenditure, and records in relation to them 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 of such kind as to have caused, or to have been likely to have caused 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.

### ***Licensing***

#### **Requirement for licences and permits**

40. (1) Subject to the provisions of this Act, a licence or licences as the case may be, shall be required for the:
- (a) generation of electrical energy;
  - (b) import or export of electrical energy;
  - (c) transmission of electrical energy;
  - (d) distribution of electrical energy; or
  - (e) supply of electrical energy to any person or premises.
- (2) Permits shall be required in respect of-
- (a) undertakings with generating plant not exceeding 3,000 kW intended for the supply of electrical energy to other persons or consumers;
  - (b) installations within a consumer's premises with generating plant of any capacity where conveyance of electrical energy to or from the transmission system or distribution system under the control of another person can occur;
- (3) No licence or permit shall be required in the case of installations with generating plant of capacity not exceeding 3,000 kW and connected within a consumer's premises in such a manner that conveyance of electrical energy to a transmission system or a distribution system cannot occur.
- (4) All undertakings operating pursuant to permits granted under this Act shall-
- (a) in the 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 system must 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 compliance with such conditions (if any) as may be specified by the Commission.
- (5) Any persons who contravenes any of the provisions of this section commits an offence and shall be punishable as provided under this Act.

#### **Application for licence or permit**

41. (1) An application, including an application for amendment, transfer or renewal, for a licence or permit shall be made to the Commission in the form and manner prescribed by regulations made by the Commission under this Act.
- (2) Before making any application for a licence, the intending applicant shall give notice by public advertisement of the intended application not more

than sixty days and not less than thirty days before the application is to be made.

- (3) As well as giving such notice by public advertisement, in at least two national newspapers of wide circulation in Kenya and at least one regional and within the time specified for its publication, 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 such notice, whether by public advertisement or by service in writing, must 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 must 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 sixty days from the date of the application as stated in the notice and that a copy of such representation or objection must be forwarded to the applicant.
- (5) The Commission may hear any objections in public at a time and place of which not less than fourteen (14) 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 licences**

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

#### **Factors to be considered in an application**

43. (1) The Commission shall, in granting or rejecting an application for a licence or permit, take into consideration—
  - (a) the energy needs of the country, area of supply or community;
  - (b) the impact of the undertaking on the social, cultural and recreational life of the community;
  - (c) the need to protect the environment and to conserve the natural resources in accordance with the Environmental Management and Coordination Act;
  - (d) land use and siting or route of the undertaking;
  - (e) detailed economic benefits to the country or area of supply of the undertaking;
  - (f) the sum proposed to be expended on 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 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 is required;
  - (i) energy and cost efficiency;
  - (j) any representations and objections made under section 41;
  - (k) the tariff offered;
  - (l) Government policies; and
  - (m) 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 within ninety (90) days after the Commission confirms to the applicant in writing that the application is materially complete in all respects.
- (3) The Commission shall, where it refuses to grant a licence, give the applicant a statement of its reasons for the refusal within thirty (30) days after the refusal.

#### **Form and conditions of licence or permit**

44. (1) Every licence shall be in such form as the Commission may determine and shall, where applicable, contain such particulars and conditions as-
- (a) the provisions for tariffs or charges for the generation, transmission, distribution, or 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 holder shall comply with all applicable safety, health and environmental laws;
  - (b) a stipulation that the holder is subject to liability under tort and the contract laws of Kenya; 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; provided that such consent shall not be unreasonably withheld.

#### **Licence and permit holders to provide access**

45. (1) A licensee or permit holder who is a network service provider shall provide non-discriminatory 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 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 consumer.

#### **Licensee not to purchase other undertakings**

46 (1) The licensee shall not purchase or acquire the undertaking of, or associate himself with, any public or local authority, company, person or body of persons supplying electrical energy under any licence, unless the licensee is authorized by the Commission to do so.

(2) If in contravention of this section the licensee purchases or acquires any such other public or local authority, company, person, or body of persons, the Commission may, if it deems fit, revoke the licence upon such terms as it deems just.

#### **Failure of licensee or permit holder to meet obligations**

47. (1) If a licensee or permit holder fails to meet his obligations under this Act, or licences, permits and contracts approved under the provisions of this Act, the Commission may serve upon him a notice in writing to meet those obligations within 14 days or such longer period but not exceeding sixty days as the Commission may determine, and if he fails to comply with the requirements of the notice-

(a) the Commission may, in order to secure compliance with an order issued under this subsection, impose such sanctions, penalties, or civil fines not exceeding amounts prescribed by regulation from time to time;

(b) the Minister may, on the recommendation of the Commission, enter upon and take possession of the undertaking of the licensee operate the undertaking for and on account of the licensee and at the risk and expense of the licensee, remitting the balance, if any, of the net income derived from the undertaking to the licensee;

(c) the Commission may revoke his licence or permit at any time.

(2) For the purposes of paragraph (b) of subsection (1)-

- (a) such entry and taking into 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 not restore possession of the undertaking to the licensee or permit holder until such time as 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.
- (3) The application of subsection (1) (b) or (c) shall not prejudice any civil 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.
- (4) Any person obstructing, or causing obstruction to the Minister or any person authorised by him in the carrying out of the duties and works pursuant to subsections (1) (b) and (2) (b) shall be guilty of an offence and liable to punishment in accordance with the provisions of this Act.

#### **Revocation of licence or permit**

48. (1) The Commission may revoke a licence or permit where-

- (a) it is satisfied that the holder is persistently either wilfully or negligently not operating in accordance with the terms and conditions of the licence or permit, or provisions of this Act or any regulations, codes or standards made under this Act;
  - (b) the licensee or permit holder is adjudged bankrupt; or
  - (c) the licensee or permit holder, at any time after commencement of the licence or permit holder, 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 at the truth of the representation.
- (2) The Commission shall give a licensee or permit holder 45 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 in Kenya and shall take effect from the date of service.
- (4) The Commission shall determine the matter within ninety (90) days from the expiry of the notice.

- (5) Where a licence or permit is 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.
- (6) Any revocation of a licence or permit granted to a person under this Act shall not indemnify that person against any penalties for which such person may have become liable under the Act.

### **Provisions where licence is revoked**

49. (1) Where the Commission at any time revokes a licence under any of the provisions of this Act or the licence, and where the generation, transmission, distribution or supply of electricity may be interrupted or affected to the detriment of the public or the consumers as a result of such revocation, the Minister may consult with the owners of the undertaking and may declare that such undertaking shall not be discontinued and shall require the owners to sell and transfer the undertaking to other competent persons who shall continue to operate the undertaking.

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

- (2) If the owner of the undertaking declines or unreasonably delays deliberately or negligently to sell and transfer the undertaking in accordance with the order of the Minister given under subsection (1), the Minister may appoint a competent and independent valuer to value the undertaking, and the valuer so appointed shall submit his valuation report to the Minister and the owner of the undertaking, whereupon the Minister may thereafter proceed to sell the undertaking through an open tendering system, subject to the reserve price determined by the valuer.
- (3) All proceeds of the sale of the undertaking under subsection (2) shall be remitted to the owner net of reasonable costs incurred by the Minister or his authorised representative in effecting the sale.
- (4) The provision of subsection (1) shall not prejudice the rights and interest of any debenture holder or secured creditors of the owner of the undertaking.
- (5) Any person obstructing, or causing obstruction to the Minister or any person authorised by him in the carrying out of the sale shall, except where such party has referred the matter to arbitration or the matter has otherwise fallen sub-judice, be guilty of an offence and liable for punishment under this Act.
- (6) Any person aggrieved by the order of the Minister or 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 licence**

50. (1) Subject to the provisions of this Act, a licence or licences as the case may be, shall be required for the carrying out of any electrical installation work.



- (2) A person desirous of obtaining an electrical installation licence shall make application in the form and manner prescribed by the Commission.
- (3) The Commission shall process all applications for electrical installation licences expeditiously and in any case, not later than 60 days from the date of application, and it may-
  - (a) grant the licence applied for accordingly, either without conditions or subject to such conditions as it may deem fit, or
  - (b) refuse to grant the licence applied for, giving reasons why the licence has been refused.
- (4) Any persons who contravenes any of the foregoing provisions of commits an offence and shall be punishable as provided under this Act.

### **Replacement of a licence or permit**

51. (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 fee as the Commission may from time to time by regulation prescribe.

### **Keeping of register of licences, permits and approvals**

52. (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) below, 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, seriously and prejudicially affect 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) Any person may, on the payment of such fee as may be so 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**

53. (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) Every licensee shall at his own cost cause the annual accounts to be examined and audited by independent auditors.
- (3) Every 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**

54. (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) Any person who refuses to allow any such inspection or fails to comply with any such demand or who wilfully hinders or obstructs the Commission or person so authorized in any such inspection shall be guilty of an offence and liable to punishment under this Act.
- (4) If any person divulges information obtained by him upon such inspection or investigation other than information in the public domain for the purposes of carrying out his duties under this Act or 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, shall be guilty of an offence and liable to punishment under this Act.
- (5) Any person authorized by the Commission under subsection (1), shall produce such authorization at the request of any person affected by his activities in terms of the said subsection.

### ***Supply of electrical energy***

#### **Contracts for bulk supply of electrical energy**

55. (1) All contracts for the sale of electrical energy, transmission or distribution services between and among licensees, and between licensees and large consumers shall be submitted to the Commission for approval.
- (2) Application for approval of contracts under subsection (1) shall be submitted to the Commission in accordance with the regulations made by the Commission under this Act.
- (3) In considering a contract under subsection (1), the Commission shall -
- (a) ensure that the rates or tariffs established in the agreement are just and reasonable;
  - (b) satisfy itself that the application includes the minimum requirements as specified by the Commission in the regulations; and
  - (c) take into account any other issues which may have a bearing on the operations of the undertakings.
- (4) In this Act a just and reasonable rate 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.

#### **Tariffs, tariff structures and terms of supply**

56. (1) The tariff structure and terms of supply shall be in accordance with principles of tariff calculation and terms of supply prescribed by the Commission taking into account the licensee's total revenues from tariffs covering all reasonable costs and a reasonable return.

- (2) All tariffs charged for electrical energy supplied shall be just and reasonable.
- (3) Any application for change, review or adjustment of tariffs shall be submitted to the Commission in the manner prescribed in the regulations.
- (4) The Commission shall determine the application made under subsection (3) within six (6) months.
- (5) A licensee may require a consumer to make such account deposit commensurate with the consumer's electrical energy consumption, before electrical energy is supplied to him, which deposit may be revised by the licensee from time to time, to take account of both the level of consumption and of 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.

### **Power to enter and use land or premises by the licensee**

57. (1) No person shall lay, and connect on any land, other than his own land, an electric supply line, whether aerial or otherwise, without the permission of the land owner or his duly authorized representative.
- (2) A person who desires to enter into any land other than his own land to carry out preliminary survey for purposes of laying, connecting or constructing an electric supply line shall seek permission from the owner of the land or his authorised representative to do so by giving not less than seven (7) days notice except where the owner or the authorized representative consents to such entry without or at shorter notice.
  - (3) A person who has obtained permission to proceed under subsection (2) and who intends to lay an electric supply line on that land shall give notice in writing to the owner of that land of his intention after the expiration of fourteen (14) days from the date of the notice on a specified day to enter upon that land for the purpose of fixing the location of the electric supply line, and within fourteen (14) days of entry shall serve the owner with a statement in writing containing full particulars and description of the proposed electric supply line.

### **Assent to proposal**

58. (1) An owner, after receipt of the notice and statement of particulars under section 57, may assent in writing to the construction of the electric supply line upon payment of such compensation as may be agreed upon and any assent so given shall be binding on all parties having an estate or interest in the land, subject to the following provisions-
- (a) that an arrangement entered into by an authorized representative of an owner under incapacity, or not having power to give assent except under this Act, shall not be valid unless it is approved by two valuers, one of whom is to be nominated by the person giving notice and the other by the authorized representative; and each of the valuers, if they approve of the arrangement, shall annex to the document containing it a declaration to that effect subscribed by them;

- (b) that any compensation to be paid by the person 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;
  - (c) 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 twelve months after the construction of the electric supply line; and the amount of compensation shall be determined in the case of dispute by the Commission.
- (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**

59. (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 the person desiring to construct an electric supply line in writing of his objection thereto within sixty (60) days after the service on him of the notice required by section 57; and in the event of objection the Commission, on the application of the person desiring to lay the electric supply line shall decide-
- (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 decision under section (1) shall be as follows-
- (a) if the decision is that loss or damage will be caused to the owner occupier or other party interested in the land, but that the loss or damage is of a nature of being fully compensated for by money, the Commission shall proceed to assess the compensation and to apportion it amongst the owner, occupier and other parties in his or their judgment entitled thereto and on payment of the sum so assessed the person giving notice may proceed to construct or lay the proposed electric supply line.
  - (b) if the decision is 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 not of a nature to admit of being fully compensated for by money the person giving notice shall not be entitled to construct or lay the proposed electric supply line;
  - (c) if the decision is 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**

60. Where an application is made under section 59, 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 them upon proof of the due service of the summons, the Commission may hear and determine the question and amount of the compensation, and for that purpose may examine the parties or any of them and their witnesses upon oath and the costs of the inquiry shall be at the discretion of the Commission.

### **Payment of compensation to and by the Commission**

61. (1) If any difficulty or question arises as to the person entitled to the compensation payable under this Act, the Commission shall order the compensation to be paid to it pending the making of an application under subsection (2).

(2) Upon the application of a person making claim to moneys paid to the Commission under subsection (1), the Commission may at the cost of the person giving notice under section 57 and 59 after such notice as it deems fit and to such person or persons as it shall direct, order distribution and payment of those moneys according to the respective rights and interests of the persons making claim to those moneys or any part thereof, and may make such other order in the premises as it deems fit.

### **Power to enter land to inspect and repair lines**

62. (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 upon the lands upon which the electric supply lines have been laid, with such assistance as may be necessary, for the purpose of inspecting and repairing them, or in case the electric supply lines are no longer required for the purpose of removing them.

(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 person liable therefor.

### **Obstructing owner of lines and other person interested**

63. A person hindering, obstructing or interfering with the exercise by the licensee, or by any other person, or by the servants or agents duly authorized by the licensee, of any right of entry upon land conferred by this Act for the purpose of construction and connecting, or repairing, inspecting or removing, an electric supply line shall be guilty of an offense and liable to punishment under this Act.

### **Liability of licensee to make compensation for damage**

64. (1) Damage caused by such entry, construction, inspection, disconnection or removal shall be repaired or compensated for by the licensee.

(2) The provisions of this Act shall not relieve a licensee of the liability, to make compensation to the owner or occupier of the land, or the agents,

workmen or servants of the owner or occupier, for damage or loss caused by the exercise or use of any power or authority hereby conferred 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.

Provided that, if before action brought in respect thereof the licensee makes tender of sufficient amends to the party, he shall not recover in an action.

### **Laying of electric supply lines along roads, railways, etc**

65 (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, pipes or other apparatus in, upon, under, over or across any public streets, road, railways, tramways, rivers, canals, harbours or Government property in such a manner and on such conditions as herein provided.

(2) Notwithstanding the provisions of any 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 pipe lines or electric supply lines along, under or over any such street, and from time to time repair, alter or remove any such posts or lines so erected, laid or constructed:

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

(3) A licensee shall, not less than 30 days before exercising any power conferred upon him by this section, give notice in writing to the authority or person concerned of his intention to do so, except in a case of emergency, and in such case he shall give such notice 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 authority or person concerned and according to a plan showing the route and in terms of specifications approved by that authority or 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 authority or person fails to exercise the powers of superintendence herein conferred after notice as aforesaid has been given, the licensee may 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 authority or person concerned and shall complete that work with reasonable despatch and reinstate the street broken up and remove the 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 a licensee fails to carry out any work referred to in subsection (4), the said authority or person may cause any work not carried out, or unreasonably delayed, to be executed at the expense of the said licensee.

- (7) A licensee shall pay to the said authority or person the costs reasonably and necessarily incurred by such authority or person in exercising any superintendence under this section.
- (8) Nothing in this section contained shall be construed as relieving a licensee from 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**

66. (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**

67. (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 day notice to the owner or occupier of the land on which the tree or hedge is growing requiring him to lop or cut it so as to prevent the obstruction or interference, 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 giving of 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 settlement, which after giving the parties an opportunity of being heard may make such order 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 Energy Tribunal.



- (3) The licensee shall issue instructions to his servants and agents with a view to securing that trees and hedges shall be lopped or cut in a woodmanlike manner and so as to do as little damage as may be 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 for the purpose of the construction or maintenance of an electric supply line operated above low voltage it is necessary to fell any trees, this section shall apply to the felling of trees in like manner as it applies to the lopping 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**

68. (1) 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.
- (2) Before commencing to lay any electric supply line which is intended for supplying electrical energy to any particular consumer, the licensee shall serve notice to persons between the points of origin and termination of the electric supply line to be laid, that it intends to lay the electric supply line, and if any persons require supply to their premises, the necessary electric supply lines shall subject to the provisions of this Act, be laid by the licensee at the same time as the electric supply line intended for the particular consumer.

### **Supply of electrical energy to persons within area of supply**

69. (1) Every 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 the day (not being an earlier day than a reasonable time after the date of application) upon which 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, 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 such 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) but, in any such event, such person who made payment towards such electric supply lines shall be entitled to reimbursement of a

fair and just proportion of the cost originally paid by such person by each person subsequently connected to such electric supply lines provided that a claim for such reimbursement shall be made within such period as the Commission may by regulation prescribe;

- (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 defrayed by any person, that difference shall, upon the application of any person, be determined by the Commission.
- (5) Forms of requisition, embodying therein a suitable note drawing attention to the provisions of this section shall be kept by the licensee at his office, 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**

70. (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 two parties.

- (2) Such meter or meters shall be supplied on hire by the licensee, who shall fix it or them 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 remuneration in money as may be approved by the Commission.

Provided that the licensee may allow the consumer to supply the meter or meters for the purpose of determining the quantity of the supply.

- (3) Such meter, whether the property of the licensee or of the consumer, may 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 such meter 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) and (4) of this section is broken without the authority of the licensee, the consumer upon whose premises the seal was placed shall be guilty of an offence and liable to punishment under this Act:

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 any consumer who is supplied with electrical energy by the licensee has provided the 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 to which he may be put 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 any person's check meter; with 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 48 hours' written notice of his intention to do so.
- (9) The licensee shall not, nor shall any person, make any alteration, adjustment or readjustment in any meter being used for ascertaining the quantity of electrical energy supplied, whereby the action of such meter as a measuring instrument is or may be affected, unless the one has given to the other not less than 48 hours' written notice of the intention to do so or unless otherwise mutually arranged.
- (10) The consumer shall at all times at his own expense keep all meters belonging to him, whereby the quantity of supply is to be ascertained, in proper order for correctly registering that quantity, and, in default of his so doing, 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, whereby the quantity of the supply is or should be ascertained, in proper order for correctly registering that quantity, and in default of his doing so 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 57, for the purposes aforesaid, have access to, and be at liberty to remove, test, inspect and replace any such meter at all reasonable times
- (13) Any person who contravenes any of the provisions of this section commits an offence, and shall upon conviction be punishable as provided under this Act.

### **Defective meters**

71. (1) Where any meter used to register the quantity of electrical energy supplied by any licensee to any consumer is found to be defective through no fault of the said licensee or 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 upto 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 consumer any charges for more than three months from the date the meter is 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 consumer, the licensee may determine the reasonable quantity of electrical energy supplied and recalculate the charges due to or 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 the said meter.

- (3) If any dispute arises as to any such recalculation, or as to any interference with any meter, that dispute shall be referred to the Commission.

### **Electric supply lines, meters and other apparatus are not fixtures**

72. (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 in his possession shall, whether or not fixed to any part of such premises, remain the property of and may be removed by such licensee, and shall not be subject to the landlord's distress for rent of such premises, 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, provided 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 section 50, 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 him.

### **When supply of electrical energy may be refused or discontinued**

73. (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 the charges for consumption of electrical energy (not being the subject of a dispute), whether any such charges are due to the licensee in respect of supply to the premises in respects of which such supply is demanded or in respect of other premises;
  - (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 an appropriate defective installation notice;

- (c) the consumer uses or permits to be used such supply for any purpose or deals with or permits it 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 sections 70(9) and 70(10);
  - (e) the consumer makes illegal or improper use of electricity;
  - (f) the consumer denies access to the licensee to his electric supply lines or any meters on the premises under the control of the consumer;
  - (g) the premises or that part thereof is the subject of an order for demolition made at the instance of the public or local authority within the area of whose jurisdiction the premises are situate; or
  - (h) the supply of electrical energy to such premises or to that part thereof is prohibited by any regulations made under this Act or any other Law.
- (2) Where any person has given to the 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 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 such deposit in or towards payment thereof; or
  - (c) apply such deposit toward payment thereof 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 of 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 any such charges, or as to application of any deposit, or as to any illegal or improper use of electrical energy, or as to any alleged defects in or as to unsuitable or as to necessary apparatus or protective devices, that dispute shall be referred to the Commission.
- (4) Where any dispute as aforesaid in subsection (3) has been referred to the Commission, or has otherwise fallen sub-judice before notice of disconnection as aforesaid has been given by the licensee, the licensee shall not exercise any of the powers conferred by this section until final determination of such difference or 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 with licensee which he is entitled to require, of the amount of the charge or other sum in dispute, and the

consumer has failed to comply with such request within forty-eight hours of the same having been made.

### **Power of the Minister to provide electric lines or funds therefor**

74. 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 uneconomic or commercially inexpedient to provide for the necessary works as specified in that behalf, the Minister, may with the consent 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.

### ***Offences and penalties***

#### **Unauthorised, fraudulent or improper supply or use of electrical energy**

75. (1) Any person who-

- (a) generates, imports, exports, transmits, distributes or supplies electrical energy in contravention of section 40 of this Act;
- (b) engages in the business of electrical installation work in contravention of section 50 of this Act;
- (c) contravenes any of the conditions of a licence granted to him under this Act;
- (d) without legal 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
- (e) connects, or permits to be connected, any meter, indicator or apparatus referred to in section 70, with any electric supply line through which electrical energy is supplied by a licensee, or disconnects, or permits to be disconnected, any such meter, indicator or apparatus from any such electric supply line, without the consent of the licensee or consumer; or
- (f) 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
- (g) 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
- (h) makes or permits to be made any alteration in his permanent installation without the previous approval of the licensee; or
- (i) 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

- (j) uses the electrical energy supplied to him for purposes other than that for which it is supplied for; or
- (k) supplies any other person with any part of the electrical energy supplied to him by the licensee, without the consent of the licensee;
- (l) contravenes any other provisions or regulations made under this Act;

commits an offence and shall be liable to such civil fines, penalties and sanctions as the Commission may by regulation prescribe from time to time.

(2) In any case where the person so offending as provided in subsection (1) is the consumer, the licensee may also:

- (a) discontinue the supply of electrical energy to the premises of such consumer and 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; and
- (b) impose and collect such penalties and surcharges as may from time to time be prescribed by the licensee and approved by the Commission.

(3) The existence of artificial or unlawful means for making such connection or disconnection as is referred to in paragraphs (d), (f) and (g) of subsection (1), or making such alteration as is referred to in paragraphs (h) of that subsection, or facilitating such use or supply as referred to in paragraphs (i), (j) and (k) of that subsection, 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) Any person who wilfully extinguishes or causes to be extinguished any public lamps or carelessly or accidentally breaks, throws down or damages any works of or under the control of the licensee or improperly uses any of the electrical energy supplied by the licensee shall for each default shall pay such sum of money to the licensee, by way of satisfaction for the damage done as the Commission may by regulation prescribe.

### **Hindering, obstructing or interfering with the exercise of licensee powers**

76. 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 shall for each default be liable to pay such sum of money to the licensee, by way of satisfaction for the damage done as the Commission may by regulation prescribe.

### **Liability under this Act and other applicable statutes**

77. (1) Notwithstanding any sanctions imposed on any person by the Commission or licensee in the terms of sections 60 and 61, that person shall also be guilty of an offence under this Act and other applicable statutes and liable on conviction to such fines as may be prescribed by the Commission from time to time or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.
- (2) The court convicting the person so offending may make such order as it deems fit to prevent that person from continuing to commit the offence.

### ***Rural Electrification***

#### **Establishment of the Rural Electrification Authority**

78. (1) There is hereby established an Authority to be known as the Rural Electrification Authority.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and of doing all such other things as a body corporate may lawfully do.
- (3) Subject to the provisions of this Act, the Authority shall not be subject to the direction or control of any person or authority in the performance of its functions.

#### **Functions of the Authority**

79. The Rural Electrification Authority shall perform the functions of-
- (a) managing the Rural Electrification Programme Fund set up under section 86 of this Act;
  - (b) developing and updating of the rural electrification master plan, and administering the allocation of funds;
  - (c) implementing the Rural Electrification Programme;
  - (d) sourcing of additional funds for the Rural Electrification Programme; and
  - (e) exploring least cost supply options (including but not limited to small hydro and hybrid systems comprising renewables and oil fired components, solar photovoltaic and wind power systems) 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.

#### **Board of the Rural Electrification Authority**

80. (1) The powers and functions of the Authority shall be performed and exercised under the direction of a governing board, comprising persons qualified to be Commissioners in terms of section 9 of this Act, which shall consist of-
- (a) a Chairman appointed by the President; and
  - (b) four (4) other members appointed by the Minister.



- (2) Subject to subsection (1), any person who has previously served on the Rural Electrification Authority is eligible for reappointment in accordance with this subsection (2).

### **Termination of appointment**

81. (1) A member of the Authority may resign his 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 Authority, remove from office a member of the Authority 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 Authority without reasonable cause to the satisfaction of the Authority in consultation with the Minister.
  - (c) is declared or becomes bankrupt;
  - (d) fails to disclose to the Authority any interest in any contract or matter before the Authority; or
  - (e) is convicted of criminal offence involving dishonesty fraud or moral turpitude and sentenced for a term exceeding six months.

### **Meetings of the Authority**

82. (1) The Authority 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 Authority but it shall meet at least four times every year.
- (2) A member of the Authority who has a direct or indirect personal interest in a matter being considered or to be considered by the Authority 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 Authority, and shall not be present during any deliberations on the matter by the Authority to take part in decision of the Authority on the matter.
- (3) Subject to the provisions of this Act, the Authority may regulate its own procedure.

### **Staff of the Authority**

83. (1) The Authority shall appoint a chief executive officer, who shall be the principal officer of the Authority and, subject to the directions of the Board, responsible for the management of the affairs of the Authority.
- (2) The Authority may appoint such officers and other staff as may be necessary for the efficient discharge of its functions.

### **Remuneration**

84. The Authority shall pay to its members and staff such salaries and allowances as it shall determine.

Provided that such salaries and allowances shall be comparable to those obtaining in other public sector institutions performing similar functions.

### **Electricity sales levy**

85. The Minister may impose a levy of up to 5% on all electricity consumed in the country, the proceeds of which shall go into Rural Electrification Programme Fund, set up under section 86 of this Act.

### **Rural Electrification Programme Fund**

86. (1) The Minister may under this Act 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 Fund shall benefit from-

- (a) the electricity sales levy as provided under section 85.
- (b) any fines or penalties collected by the Commission under this Act;
- (c) annual exchequer budgetary support; and
- (d) donations, grants and loans.

(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**

### **Interpretation**

87. In this part of the Act, unless the context otherwise requires

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

"Exclusive Economic Zone" has the meaning assigned to it in section 2 of the Maritime Zones Act;

"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 Kenyan Standards;

"minimum operational stocks" means the amounts of petroleum prescribed by the Commission under section 63;

"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 standards do not conform to the relevant Kenya standards;

"oil spill" means spillage of petroleum of at least 500 litres;

"petroleum" includes petroleum crude and any liquid or gas made from petroleum crude, coal, schist, shale, peat or any other bituminous

substance or from any product of petroleum crude 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;

"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;

"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;

"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;

### **Regulations for petroleum**

88. (1) Without limiting the generality of section 7 and in accordance with sections 20 and 21 of this Act the Commission may 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, 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 the same, the fees which may be charged and any other matters incidental thereto;
- (c) providing for exemption to Government departments and 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 Environment, 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;
- (v) generally for the better carrying out of the provisions and purposes of this Act.

### ***Licensing***

#### **Licence for petroleum business**

89. (1) No person shall conduct the business of importation, refining, exportation, wholesale, retail, storage, parking and transportation of petroleum, except under and in accordance with the terms of a current licence.
- (2) No licensee shall sell petroleum to a person for the purpose of exportation or for resale in Kenya unless that person has a valid licence.
  - (3) No vehicle shall be used for the purpose of transporting petroleum unless such vehicle has a valid petroleum permit under this Act.
  - (4) No person shall engage a driver for the purpose of transporting petroleum unless such driver has a valid petroleum driver certification.
  - (5) No person shall drive a vehicle for the purpose of transporting petroleum unless he has a valid petroleum driver certification in accordance with Section 89 of this Act.
  - (6) Any person who contravenes subsections (1), (2), (3), (4) or (5) shall be guilty of an offence and liable for punishment under this Act.

#### **Licensing Agents**

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

#### **Granting of licences**

91. (1) A person desirous of obtaining a licence shall make application to the Commission or licensing agent in a manner that may be prescribed by the Commission, and the Commission or licensing agent may within thirty (30) days:

- (a) grant a licence accordingly, either without conditions or subject to such conditions as he may deem fit, or
  - (b) refuse to grant a licence.
- (2) Where the Commission or licensing agent -
- (a) refuses to grant a licence, or
  - (b) imposes conditions in a licence,
- the Commission or licensing agent shall give to the applicant, the reasons in writing for the action.
- (3) A licence shall be required every year and the validity of such licence shall be upto the day of the month in which it was issued the previous year.
- (4) A continuing petroleum business must have the licence renewed every year, unless an application for renewal has been made to the Commission or the licensing agent as provided for in subsection (5), and such licence renewal has not been granted.
- (5) (i) An application for the renewal of a licence shall be made at least thirty (30) days before the expiry date of the existing licence.
- (ii) Any person who contravenes subsection (5) (a) shall be liable to a penalty equivalent to twenty (20) per cent of the licence fee.
- (6) A licence shall specify 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:
- (7) The effect of a licence shall be to authorise the licensee to conduct a petroleum business specified in the licence at the premises so specified.
- (8) There shall be payable in respect of each petroleum business authorised by a licence a fee as shall be prescribed by the Commission.

### **Amendment of licences**

92. (1) Subject to the provisions of this Act, a person may make application in the prescribed manner for his licence to be amended, and the Commission or licensing agent may amend the licence and endorse it accordingly.
- (2) Where the Commission or 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 reason in writing for the action.
- (3) A licence amended under this section shall retain the same expiry date existing before the amendment.
- (4) Where a licence has been amended, there shall be payable a fee of ten (10) percent of the fee paid for the issue of such licence.

### **Transfer of licences**

93. (1) Subject to the provisions of this Act, no licence shall be transferred to any person, save as hereinafter provided.
- (2) The Commission or licensing agent may, on application, transfer a licence-

- (a) in the case of the death of the licensee, to the legal representative of such licensee;
- (b) in the case of the bankruptcy of the licensee 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; and
- (e) in the case of voluntary transfer of the petroleum business, to the new business owner;

and a licence so transferred shall, notwithstanding any other provision of this Act, continue to retain an expiry date similar to the one existing in the licence before the transfer.

- (3) There shall be payable upon transfer of a licence under subsection (3), ten (10) percent of the fee paid for the issue of such licence.
- (4) A licensee who lends, transfers or assigns, or attempts or purports to lend, transfer or assign, his licence to any other person, and any person who borrows or makes use of a licence granted to another and not lawfully transferred under subsection (2), commits an offence and shall be liable to punishment under this Act.

### **Display of licences**

- 94. Every licence 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 was issued and where a licence is not so displayed the licensee commits an offence and shall be punishable under this Act.

### **Principles of licensing**

- 95. (1) In the performance of the functions under sections 91 and 92, the Commission or licensing agent shall issue a licence if satisfied that the applicant meets all the licensing conditions prescribed by regulations made under this Act.
- (2) The Commission or licensing agent shall be at liberty to refuse to renew or grant a licence, or attach conditions thereto, on the ground that the applicant has used discriminatory or otherwise unfair or improper trading practices in respect of that or any other petroleum business.

### **Revocation of licence**

96. (1) The Commission or licensing agent may revoke a licence where-
- (a) it is satisfied that the licensee is persistently either wilfully or negligently not operating in accordance with the terms and conditions of the licence or provisions of this Act or any regulations, codes or standards made under this Act;
  - (b) the licensee is adjudged bankrupt; or
- (2) Unless otherwise specified in the licence, the Commission or licensing agent shall give a licensee 14 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 is related;
  - (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 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 licensee's principal office in Kenya and shall take effect from the date of service.
- (4) The Commission or licensing agent shall determine the matter within thirty (30) days from the expiry of the notice.
- (5) Any revocation of a licence granted to a person under this Act shall not indemnify that person against any penalties for which such person may have become liable under the Act.

### **Replacement of a licence**

97. (1) 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 licensing officer shall issue a duplicate licence to the licensee.
- (2) There shall be payable upon replacement of a licence under subsection (1), ten (10) percent of the fee paid for the issue of such licence.

### **Register of licences and permits**

98. (1) The Commission shall keep a register, in such form as he may determine, all licences and permits granted and shall record therein in respect of each licence or permit-
- (a) the particulars required under section 72;
  - (b) particulars of any duplicate issued or any amendment of the licence or permit made under section 73, 74 and 78;
  - (c) particulars of any revocation of the licence or permit under section 72; 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.

### **Appeals against action of a licensing agent**

99. (1) Any person who is aggrieved by the action of 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 twenty one (21) days of receipt by him of written notification of such action, in writing appeal to the Commission, whose decision shall be communicated within forty five (45) days of receipt of the appeal by the Commission from any such aggrieved person.
- (2) Where an appeal has been made to the Commission under subsection (1), the Commission, before making a decision on the appeal may first refer it to a committee appointed under section 23 and consider the advice of that committee.

### **Construction permits**

100. (1) Any person intending to construct a pipeline, refinery, bulk storage facility, bulk liquefied petroleum gas facility, natural gas 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) state the name and address of the person who will be the 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; and
  - (e) 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, by notice in the Gazette, grant to the applicant 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 the prescribed conditions.
- (5) Where the Commission has refused 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**

101. (1) The Commission shall, before issuing a permit under section 81, take into account all relevant factors, including but not limited to-

- (a) the relevant Government policies;
  - (b) compliance with the Environmental Management and Co-ordination Act and in particular, the report of the environmental impact assessment study in respect of the project, Physical Planning Act, Local Government Act and any other relevant laws;
  - (c) the financial capability of the applicant, and methods of financing the proposed pipeline, refinery, bulk storage facility, bulk liquefied petroleum gas facility, natural gas 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:
- (a) the duration of the permit;
  - (b) the person authorised to execute the works;
  - (c) the area in which the works shall be executed;
  - (d) the 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 such conditions as are mentioned in paragraph (d) of subsection (2), no person shall, before the conditions are satisfied, use any works of which the execution was authorised by the permit except to the extent specified, in a notice given by the Commission to the person to which the permit was issued, as 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 stating that the conditions specified in a permit pursuant to subsection (2) (d) have been satisfied shall be conclusive evidence for the purposes of this Act that those conditions have been satisfied.
- (5) Where a permit containing the conditions referred to in subsection (2) (d) is cancelled or otherwise ceases to be in force prior to the completion of the

authorised works, the applicant shall, to the extent of partially executed works, be deemed to have satisfied the prescribed conditions.

### **Exemption from the requirement for a permit**

102. (1) In the case of any emergency works for the construction of a pipeline, the execution thereof may be effected without any authorisation by the Commission:

Provided that as soon as is reasonably practicable 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.

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

### **Revocation or suspension of a permit**

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

(2) Where the Commission intends to revoke or suspend a permit under this section, it shall, at least twenty-one (21) 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 discretion.

(3) Notwithstanding the provisions of subsections (1) and (2), the Commission may by notice in the Gazette, revoke or suspend a construction permit on the application or with the consent of the person who had been given such permit.

(4) The Commission may by notice in the Gazette, 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**

104. If, after a permit to construct a pipeline, refinery or bulk liquefied petroleum gas and natural gas facilities, bulk storage facilities and retail dispensing sites has been granted, the execution of the works has not commenced at the expiry of twelve (12) 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**

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

(2) In the absence of such Kenyan Standards the Commission may prescribe other standards in consultation with the body responsible for standards.

- (3) Subject to subsection (2), no person shall offer for sale in Kenya any off-specification petroleum, or petroleum which has no Kenyan Standard without prior authority from the Commission in consultation with the Minister.
- (4) Any 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) and (2).
- (5) Any person
  - (a) selling petroleum not conforming to the relevant Kenya Standards or any other approved by the Commission; or
  - (b) storing, transporting, or selling adulterated petroleum;shall be guilty of an offence and liable to punishment under this Act.

### **Exportation of petroleum**

106. (1) Any person who imports petroleum or purchases petroleum in Kenya for export, shall ensure that such petroleum is exported to its intended destination.
- (2) Any person who procures petroleum for export under subsection (1), and uses such petroleum in Kenya without paying all the required levies, duties and taxes shall be guilty of an offence and liable to punishment under this Act.

### **Maintenance of minimum operational stocks**

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

### **Power of the Minister to provide strategic petroleum stocks**

108. The Minister, may with the consent of the National Assembly undertake in whole or in part the provision of financing, procurement, maintenance and management of petroleum strategic stocks.

### **Compliance with environment health and safety standards**

109. (1) Every person engaged in a petroleum business shall comply with the relevant Kenya Standards and in the absence of such standards, any other standards approved by the Commission from time to time on environment, health and safety in consultation with relevant authorities.
- (2) Any person operating a petroleum facility on land, coastal or inland waters shall be required to carry out an Environmental Impact Assessment of his undertaking in accordance with the requirements of the Environmental Management and Coordination Act and shall institute measures to mitigate against fire, explosion, oil spill and/or injury hazards and the impact of these hazards in the course of operating a petroleum facility.
- (3) In the event of a fire, explosion, oil spill, injury or fatality occurring in the course of operating a petroleum facility or transportation either by accident or through negligence, the operator or person transporting shall forthwith

clean up the polluted and damaged environment to the satisfaction of the Commission and other relevant authorities.

- (4) If such operator or person transporting fails, or unreasonably delays, to carry out the work referred to in subsection (3), the Commission may cause any work not carried out to be executed at the expense of the said operator or person transporting.
- (5) Nothing contained in this section shall be construed as relieving the operator or person transporting from any liability in respect of any loss or damage caused by his failure to comply with the provisions of this section.
- (6) Any person transporting petroleum by road, rail, coastal or inland waters, pipeline or any other mode shall institute measures to mitigate their impact in the process of transporting petroleum.
- (7) The Commission may at any time require such operator of a facility or transporter to show that he is in compliance with the provision of this section.

### **Designated parking places reserved exclusively for petroleum tankers**

110. (1) Every local authority shall designate places exclusively reserved for parking of petroleum tanker vehicles.
- (2) Any local authority which fails to provide adequate designated places for the parking of petroleum road tanker vehicles commits an offence and shall be liable to fines and daily penalties for every day on which the violation continues, the quantum of which the Commission may from time to time prescribe by regulation.

### **Reporting of incidents**

111. (1) All persons engaged in petroleum business shall be required to notify the Commission in writing of any incident causing a fatality, personal injury, explosion, oil spill, major fire or any other incident causing significant harm to property or the environment which has arisen in Kenya or within Kenya's Exclusive Economic Zone.
- (2) The Commission may direct an investigation to be carried out into an incident under subsection (1) and take action where it deems necessary.

### ***Offences and penalties***

### **Contravening provisions relating to petroleum undertakings**

112. (1) Any person who-
  - (a) engages in the business of importation, refining, exportation, and transportation (not by road) of petroleum in contravention of this Act;
  - (b) engages in the business of wholesale, retail, storage and transportation by road of petroleum in contravention of this Act;
  - (c) contravenes any of the conditions of a licence granted to him under this Act;
  - (d) contravenes any specifications of petroleum prescribed under this Act;

- (e) stores, transports or sells adulterated petroleum;
- (f) contravenes any of the provisions relating to the supply of statistics;
- (g) contravenes any of the provisions relating to exportation of petroleum;
- (h) sells petroleum for which duty, levies and taxes have not been paid;
- (i) contravenes any provisions on maintenance of minimum operational stocks of petroleum;
- (j) (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;
- (k) (being the owner of a pipeline, refinery or bulk liquefied petroleum gas or natural gas facility) contravenes any provisions relating to the construction and operation of a pipeline, refinery or bulk liquefied petroleum gas or natural gas facility or regulations thereof;
- (l) (not being the owner of the pipeline or his agent) interferes in any manner with such pipeline;
- (m) (being the owner of a retail dispensing site or storage depot) contravenes any provisions relating to construction and operation of retail dispensing site storage depot or regulations thereof;
- (n) (being the owner of a transport vessel) contravenes any of the provisions relating to the transportation of petroleum:
- (o) stores petroleum in contravention of provisions under this Act;
- (p) contravenes any of the provisions relating to display of petroleum prices at retail dispensing sites; or
- (q) who resists, hinders or obstructs an employee, servant or agent of the Commission acting in the course of duty, or wilfully fails to comply with any requirements lawfully made:

shall be guilty of a civil offence and liable to such civil fines, penalties and sanctions as the Commission may by regulation prescribe from time to time.

- (2) In any case where the person so offending in the terms of subsection (1) is licensed under this Act, the Commission may modify or revoke his licence.

### **Contraventions by petroleum carrying ships**

- 113. (1) The owner or master of any ship carrying a cargo, any part of which consists of petroleum, who fails to give such notice to the port authorities upon entering a port, as may be required by regulations made under this Act shall be guilty of a civil offence and liable to such civil fines, penalties and sanctions as the Commission may by regulation prescribe from time to time.
- (2) In the event of the contravention of any regulations made under this Act relating to provisions on the precautions to be observed with respect to

ships carrying petroleum within a port, the owner and the master of the ship in or in relation to which the contravention occurs, and except in the case of a contravention in respect of the mooring of a ship, the owner of any petroleum in respect of which the contravention occurs shall be guilty of a civil offence and liable to such civil fines, penalties and sanctions as the Commission may by regulation prescribe from time to time.

- (3) Any person who discharges or allows to escape into the water petroleum or water mixed with petroleum or water from bilges or tanks or water used for flushing pipes and connections or sand used to absorb petroleum shall be guilty of a civil offence and liable to such civil fines, penalties and sanctions as the Commission may by regulation prescribe from time to time.

### **Liability under other applicable statutes**

114. (1) Notwithstanding any sanctions imposed by the Commission in the terms of sections 112 and 113, the person so offending may also be liable under other applicable statutes and liable on conviction to such fines as may be prescribed by the Commission from time to time or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.
- (2) The court before whom any person is convicted under this section may order that the petroleum in respect of which the offence was committed be forfeited to the state, the disposal cost of which shall be paid by the said person.

## **PART V – ENERGY TRIBUNAL**

### **Establishment and members of the Energy Tribunal**

115. (1) There is hereby established a tribunal to be known as the Energy Tribunal to hear appeals against decisions of the Commission.
- (2) The members of the Tribunal shall be appointed from among persons with a university degree and not less than fifteen (15) years relevant experience in matters related to industry, electricity, petroleum, finance, economics, engineering, energy or law and shall consist of-
  - (a) the Chairman and Vice Chairman appointed by the President, in consultation with the Judicial Service Commission from among persons qualified to be judges of the High Court; and
  - (b) three other members appointed by the Minister on recommendation of the Public Service Commission.

### **Conditions of appointment**

116. (1) A member of the Tribunal shall hold office for five years and is eligible for re-appointment for a further final term of five years.
- (2) A member of the Tribunal may be appointed on a part-time or full time basis.
- (3) A member of the Tribunal shall hold office on such terms and conditions as will be prescribed in his letter of appointment.

### **Oath of office**

117. 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 and the Judicial Oath.

### **Disclosure of interest**

118. 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**

119. (1) A member of the Tribunal may resign his 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 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 matter before the commission in accordance with section 103; or
- (e) is convicted of criminal offence involving dishonesty fraud or moral turpitude and sentenced for a term exceeding six months.

### **Secretariat of the Tribunal**

120. (1) There shall be a secretary to the Tribunal who shall be appointed by the Tribunal upon such terms and conditions as the Tribunal may think fit, and who shall be the head of the secretariat of Tribunal and responsible for the arranging the business of the Tribunal meetings and of keeping records thereof, and shall perform such other duties as the Tribunal may direct.

(2) The Tribunal may for the efficient discharge of its functions engage on such other employees with relevant qualifications on such terms and conditions as it deems fit.

### **Official seal**

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

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



### **Arrangement of business**

122. (1) The Chairman is responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal.
- (2) Without limiting the operation of subsection (1), the Chairman 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 Chairman 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**

123. (1) The Chairman shall preside at all sittings of the Tribunal and in the absence of the Chairman, the Vice Chairman shall preside.
- (2) The quorum of the Tribunal shall be constituted by three members including the Chairman and/or the Vice Chairman.

### **Technical advice**

124. 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 he may have in the matter before the Tribunal or any subsequent interest acquired.

### **Remuneration**

125. A member of the Tribunal or a person giving technical advice to the Tribunal shall be paid an allowance that may be determined by the Minister.

### **Funds of Tribunal**

126. (1) The funds of the Tribunal shall consist of -
- (a) Appropriations by Parliament;
  - (b) grants or donations from sources acceptable to the Minister and the Minister responsible for finance;
  - (c) fees collected by the Tribunal under this Act
- (2) The Tribunal shall keep books and records of accounts and shall cause regular audits of such books and records to be undertaken.

### **Jurisdiction of Tribunal**

127. (1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy sector.
- (2) For the avoidance of doubt, the jurisdiction of the Tribunal does 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.
- (3) The Tribunal shall in the exercise of its jurisdiction under this Act have all the powers of the High Court.

### **Power of review and appeals from Tribunal**

128. (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 Tribunal**

129. (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 chairman or the person presiding shall have a casting vote.
- (3) A witness before the Tribunal shall have the same immunities, obligations and privileges as a witness before the High Court.
- (4) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice.
- (5) Except as prescribed in this Act, the Tribunal may regulate its own procedure.

## **PART VI – REPEALS AND SAVINGS**

### **Repeals and savings**

130. (1) Subject to the provisions of subsection (3), the Electric Power Act, No 11 of 1997 and the Petroleum (Act Cap 116) are repealed.
- (2) Notwithstanding the repeals the Electric Power Act, No 11 of 1997 and of the Petroleum Act (Act Cap 116):
- (a) anything done in terms of the provisions of the Electric Power Act, No 11 of 1997 before the commencement of this Act shall be deemed to have been done in terms of the latter provisions;
  - (b) any statutory instruments issued by the Electricity Regulatory Board or Minister in terms of the provisions of the Electric Power Act, No 11 of 1997 before the commencement of this Act shall be deemed to be statutory instruments granted by the Commission in terms of the provisions of this Act and shall remain in force until specifically revoked under this Act;
  - (c) any person having a valid licence for the importation, refining, exportation, wholesale, storage, retail or transportation of petroleum issued in terms of the Petroleum (Act Cap 116) before the commencement of this Act shall be deemed to have a valid license under this Act;
  - (d) any revocation of a license or permit granted under this Act shall not indemnify that person against the infliction or any penalties to which the person may have become liable under the Act before such revocation, 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.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of the Bill is to amend and consolidate the laws relating to electrical energy and petroleum, as well as providing for the regulation and development of other energy sources as identified in Sessional Paper on Energy. The Bill also provides for the establishment of the Energy Regulatory Commission as a successor to the Electricity Regulatory Board with an expanded mandate, establishment of the Rural Electrification Authority to enhance the pace of rural electrification and the Energy Tribunal to determine appeals against decisions of the Energy Regulatory Commission.

## **ENERGY POLICY OBJECTIVES**

The broad objective of the Sessional Paper on energy is to ensure adequate, cost effective and affordable supply of energy to meet development needs, while protecting and conserving the environment. The specific objectives are to:

- (a) provide sustainable energy services for development;
- (b) utilise energy as tool to accelerate economic empowerment for urban and rural development;
- (c) improve access to affordable energy services;
- (d) provide an enabling environment for the provision of energy services;
- (e) enhance security of supply;
- (f) promote development of indigenous energy resources; and,
- (g) promote energy efficiency and conservation as well as prudent environmental, health and safety practices.

In order to meet these policy objectives and address the demand for energy as a critical input for development, the following key challenges have been identified:

- (a) expanding and upgrading of energy infrastructure;
- (b) promotion of energy efficiency and conservation;
- (c) protecting the environment;
- (d) mobilizing requisite financial resources for operation and expansion consistent with rising demand;
- (e) ensuring security of supply through diversification of sources and mixes in a cost effective manner;
- (f) increasing accessibility to segments of the population;
- (g) improving corporate governance and accountability;
- (h) enhancing legal, regulatory and institutional frameworks to create both consumer and investor confidence; and,
- (i) enhancing and achieving economic competitiveness and efficiency in energy production, supply and delivery.

Current legislation relating to energy comprises the Electric Power Act, No 11 of 1997 that regulates the generation, transmission, transformation, distribution, supply and use of electrical energy; and the Petroleum Act, Cap 116 which regulates importation into the country, road transportation and storage of petroleum products.

The Electric Power Act, No 11 of 1997 does not explicitly provided for regulatory independence and autonomy. The Act provides for the Minister to hear appeals against decisions of the Board.

Licences are recognised as the main regulatory tools, yet issuance of these is vested in the Minister, whereas the regulatory oversight is vested in the Board. Licensing provisions for some activities such as transmission and system operation; retail supply independent of distribution and electrical installation work are inadequate or non-existent in the Electric Power Act.

The Sessional Paper identified the need for other players in the electricity supply industry such as electric power producers to access electricity consumers thereby introduce competition in supply, where KPLC currently enjoys monopoly.

Regulatory functions in the petroleum sector are exercised by the Ministry of Energy, Provincial Administration, Local Authorities and the Petroleum Institute of East Africa (PIEA). PIEA is a voluntary membership institution patronised by the major oil companies, and plays a key role in self-regulation, capacity building and awareness creation.

Concerns with regard to the Petroleum subsector include inadequate enforcement of quality and safety standards for emerging operators who may not be members of PIEA, fears of cartelisation by the major operators and inadequate competition in the market.

There is no enabling legislation for other forms of energy including biomass solar energy, wind energy, tidal wave power, small hydros and power alcohol. Biomass is the predominant form of energy, providing close to two thirds of the country's energy needs but there is no legal framework for such activities as charcoal production, distribution and marketing. Awareness of tree farming as a commercially viable business is lacking and there is inadequate data on biomass consumption and production. Incentives for cogeneration projects from biomass and harmonization of the policies and activities of the various ministries responsible for biomass energy issues are inadequate.

The challenge, therefore, was to review the existing laws to conform to the emerging issues in the electric power and petroleum sub-sectors, and to develop appropriate legal and regulatory regimes for biomass and other renewable energies, which challenge the draft Energy Bill, 2004 seeks to meet.

### **Structure of draft Energy Bill, 2004**

*The draft Energy Bill, 2004, comprises six parts. These are Part I Preliminary, Part II Energy Regulatory Commission, Part III Electrical Energy, Part IV Petroleum, Part V Energy Tribunal and Part VI Repeals and Savings.*

**Part I Preliminary** has 4 sections, namely Citation, Interpretation in which terms common to all parts of the Bill are defined and Application of Act. This part also outlines the Powers of the Minister which include responsibility for sector policy, appointment of Commissioners and members of the Tribunal and Rural Electrification Authority, imposition of levies, guidance on management of strategic petroleum stocks and duties during public emergencies.

**Part II Energy Regulatory Commission** has 33 sections and provides for the establishment of the Commission, its objectives, functions and powers; appointment and termination its membership, including the Director General as the chief executive officer and staff of the Commission including Commission Secretary, directors and inspectors. Other provisions relate to meetings and procedure of the Commission, funds of the Commission and the keeping of its books, accounts and records, and audits and reports. There are sections providing for the Commission's power to make regulations for all energy forms and the procedure therefore, the appointment and powers of committees or agents, standardisation; the reporting of accidents to the commission, recovery and application of licences fees and penalties; transfers, validity and revocations of licences. Offences by bodies corporate or their employees; and appeals against decisions of the Commission conclude the provisions in this part.

**Part III Electrical Energy** starts with definitions of terms, powers of the Commission and regulations specific to electrical energy. Next are provisions on licensing and requirement for licences or permits; failure of licensees to meet their obligations; revocation of licences and licensing for electrical installation work. Keeping of licensee accounts, records and filing of their reports to the Commission as well as the Commission's powers to enter, inspect and investigate their undertakings are also provided for in this part. In addition, this part deals with the power of licensees to enter and use other persons' lands and the procedures thereof, supply of electrical energy; metering of electrical energy supplied; offences and penalties; appeals against decisions of the Commission. This part finally provides for establishment of the Rural Electrification Authority to be responsible for rural electrification.

**Part IV Petroleum** provides for extra definitions of terms, powers of the Commission and regulations specific to petroleum; the appointment of licensing agents; display, revocation and replacement of licences and appeals against action of a licensing officer. Other provisions deal with standards for petroleum products, equipment, facilities and installations; export of petroleum; maintenance of minimum operational stocks; construction permits by the Commission, revocation or suspension of a permit and compliance with environment health and safety standards. There are also clauses dealing with provision of parking places for petroleum tankers; reporting of accidents; offences and penalties; contravening provisions relating to petroleum undertakings and liability under other applicable statutes.

**Part V Energy Tribunal** has 15 sections and provides for the establishment of the Energy Tribunal, including conditions of appointment of its members; the Secretariat of the Tribunal, arrangement of business, disclosure of interest by members, termination of their appointment and seeking and receipt of technical advice. More provisions deal with remuneration and funds of the Tribunal, jurisdiction of the Tribunal; power to review its decisions and appeals and appeals against decisions of the Tribunal.

Finally, **Part VI** deals with the repeals of the Electric Power Act, No 11 of 1997 and of the Petroleum Act (Cap 116)