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CONTENTS

| No. | | Page |
|-----|--|------|
|-----|--|------|

ACT

| | | |
|---|---|-----|
| 6 | Lesotho Electricity Authority (Amendment) Act, 2011 | 307 |
|---|---|-----|

GOVERNMENT NOTICE

| | | |
|----|---|-----|
| 16 | Statement of Objects and Reasons of the Lesotho Electricity Authority Act, 2011 | 326 |
|----|---|-----|

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ACT NO. 6 OF 2011

Lesotho Electricity Authority (Amendment) Act, 2011

ARRANGEMENT OF SECTIONS

Sections

1. Short title and commencement
2. Interpretation
3. Establishment of the Lesotho Electricity Authority
4. Qualifications of Board Members
5. Exclusive powers
6. General Duties
7. General Functions
8. Review and setting of tariffs, rates and charges
9. Reporting
10. Appointment and duties of inspectors
11. Technical standards and type approval
12. Supply rules and by-laws
13. Contents of supply rules and by-laws
14. Regulated activities
15. Sale of production capacity
16. Self supply of electricity
17. Introduction of by-pass sales
18. Conditions of distribution and supply licenses
19. Types of offences
20. Service offences
21. General duties of distribution companies
22. Transitional Provisions
23. Schedules

ACT NO. 6 OF 2011

Lesotho Electricity Authority (Amendment) Act, 2011

An Act to amend Lesotho Electricity Authority Act, 2002.

Short title and commencement

1. This Act may be cited as the Lesotho Electricity Authority (Amendment) Act 2010 and shall come into operation on such a date as the Minister may, by notice published in the Government Gazette, appoint.

Interpretation

2. The Principal Act is amended in section 2 -

- (a) by deleting and substituting the following definitions in their appropriate alphabetical order -

“Act” means Lesotho Electricity and Water Authority Act, 2010;

“ancillary services” in relation to electricity means services which may be required from time to time for system security and stability and which are identified in a transmission code; and in relation to water means services which may be required from time to time for system security and stability and which are identified in a water supply code;

“Authority” means the Lesotho Electricity and Water Authority established in terms of section 3 of this Act;

“Board” means the Board of the Lesotho Electricity and Water Authority established in accordance with section 4 of this Act;

“bulk supply” in relation to electricity means the supply of electricity in bulk by an electricity producer to another electricity producer or any electricity supplier; and in relation to water means the supply of raw or treated water by a water services provider to another water services provider;

“distribution system” in relation to electricity means the system which consists, wholly or mainly, of low voltage lines and electric plant and which is used for conveying electricity from a substation to final consumers; and in relation to water the system which consists wholly or mainly of reticulation pipe lines for conveying water and sewerage services to and from the final users of the services;

“licensed distribution operator” in relation to electricity means a person authorised pursuant to this Act to carry on the distribution of electricity; and in relation to water means a person authorised pursuant to this Act to carry out distribution of water and sewerage services by reticulation system;

“licensed production operator” in relation to electricity means the holder of a generation licence granted by the Authority pursuant to this Act; and in relation to water means a holder of a water treatment and production licence granted by the Authority pursuant to this Act;

“output” means electricity or water produced by a production facility;

“production capacity” in relation to electricity means electricity generation capacity; and in relation to water means water treatment and production capacity;

“production facilities” in relation to electricity means facilities for the generation of electricity; and in relation to water means facilities for the treatment and production of water;

“regulated activities” means the activities listed in section 41;

“relevant assets and liabilities” in relation to electricity means all physical assets, contracts, rights and liabilities used for the purpose of electricity generation, transmission and distribution; and in relation to water means all physical assets, contracts, rights and liabilities used for the purpose of water treatment, transmission, storage, distribution and supply; and in relation to sewerage means the facilities used for the collection, transportation, treatment and safe disposal of wastewater;

“self-supply” in relation to electricity means the supply of electricity by a person to himself or herself, his or her employee or business, and in relation to water means the use of water by a person within his or her domestic premises,

the supply of water by a person to his or her employees or the use of water by a person within premises where he or she carries on a business or other activity for his or her own purposes.

“streetworks” in relation to electricity means any kind of work (including but not limited to, installation, maintenance, repair or alterations) to electrical lines or electrical plants and all works associated with or incidental thereto, including but not limited to opening and breaking up streets, sewers or tunnels under streets, tunneling or boring and removing earth and other materials; and in relation to water any kind of work (including but not limited to construction, installation, maintenance, repair or alterations) to the reticulated water and sewerage system and all works associated with or incidental thereto (including but not limited to opening and breaking up streets, sewers or tunnels under streets, tunneling or boring and removing earth and other materials;

“supply” in relation to electricity means a supply through electric lines to final consumers for consumption; and in relation to water means a supply through reticulation water systems to final consumers for consumption; and

- (b) by inserting the following new definitions in their appropriate alphabetical order:

“regulated services” means services provided under a licence or licence exemption issued in terms of this Act;

“reticulation system” means a system used for treatment, transmission, storage, distribution and supply of water and sewerage services;

“service provider” means a person authorised to supply electricity or to supply water and sewerage services under and in accordance with a licence or licence exemption;

“sewerage” means soil water, waste water or manufacturing or trade effluent but excluding storm water;

“sewerage services” means safe disposal of sewerage, the collection of sewage, or the treatment and disposal of sewerage in accordance with the applicable environmental protection or public health legislation;

“sewerage system” means the system of pits, reserves and network of pipes or conduits used for the collection, transportation, treatment and disposal of sewerage;

“transmission of water” means conveying water from the treatment works to the point of distribution;

“water services” means the supply of water by a water services provider to end-users and may include sewerage services; and

“water supply code” means the code required to be prepared by a services provider pursuant to the terms of its licence which prescribe technical standards and procedural rules to be observed.

Establishment of Lesotho Electricity Authority

3. Section (3) of the Principal Act is amended by -

(a) deleting subsection (1) and substituting the following:

“(1) There is established a body to be known as the Lesotho Electricity and Water Authority for the regulation of the electricity sector and water and sewerage services in Lesotho for the purpose of performing the functions and carrying out the duties given to it under this Act.”.

(b) deleting subsection (3).

Qualifications of Board Members

4. section (5) of the Principal Act is repealed and the following section is substituted:

“(5) (1) The appointing authority shall, in appointing members of the Board, appoint persons who collectively have experience and qualifications in the following areas: industry, commerce, law, accountancy, economics, engineering, electricity technology, water resources management, water supply and water sanitation services and technology and any other experience relevant to the regulation of the Electricity and Water Supply and Sewerage Services sub-sector.

(2) Among the Board members shall be not less than two persons with electricity related qualifications referred to in sub-section (1) and not less than 2 persons with water related qualifications referred to in sub-section (1).”.

Exclusive powers

5. Section 14 of the Principal Act is repealed and the following section is substituted:

“14. The Authority shall have sole and exclusive power to;

- (a) regulate the electricity sector including all licensed operators in accordance with this Act; and
- (b) regulate the water and sewerage services sub-sector, fees and tariffs charged and standards of services to be provided by all water and sewerage services providers in accordance with this Act.”.

General Duties

6. Section 21 of the Principal Act is amended by -

- (a) deleting “and” in paragraph (j);
- (b) deleting the full stop at the end of paragraph (k) and substituting a semi-colon;
- (c) inserting the following paragraphs after paragraph (k):
 - “(l) promote the expansion of water and sewerage services in Lesotho, where it is economic and cost-effective;
 - (m) promote access to a sustainable supply of potable water and basic sewerage services;
 - (n) promote and ensure that, every person living in Lesotho has access to a safe, clean and continuous water supply;

- (o) promote the development of access to basic sewerage services for every person living in Lesotho;
- (p) ensure the operation and development of a safe, efficient and economic water supply and sewerage services sub-sector;
- (q) ensure the financial viability of efficient regulated utilities in the water supply and sewerage services sub-sector;
- (r) promote private public partnerships in the provision of water and sewerage services where it is appropriate and feasible and ensure fair competition in the water supply and sewerage services sub-sector;
- (s) protect the interests of all consumers of water supply and sewerage services in relation to access, the quality of service and price of the service;
- (t) ensure collection, publication and dissemination of information relating to standards of performance by licensed operators and on the water supply and sewerage services sub-sector for use by consumers, industry and prospective investors; and
- (u) develop annual and multi-annual water supply and sewerage services targets with a view to increasing access to potable water and sewerage services to the widest number of users.”.

General Functions of the Authority

7. Section 22 of the Principal Act is amended by -
- (a) deleting “and” in paragraph (k);
 - (b) deleting the full stop at the end of paragraph (l) and substituting a semi-colon;

- (c) inserting the following paragraph immediately after paragraph (l):
- “(m) periodically review the provision of water supply and sewerage services in Lesotho and make appropriate recommendations to the Government;
 - (n) determine fees and tariffs for water supply and sewerage services;
 - (o) approve and propose modifications to the water supply code;
 - (p) establish, maintain, review, monitor and enforce service quality and technical standards for water supply and sewerage services;
 - (q) approve, modify, monitor and enforce a code on works undertaken by any person with respect to water supply and sewage disposal; and
 - (r) approve, modify, monitor and enforce terms and conditions for water supply and sewerage services to consumers.”
- (d) inserting the following new subsection immediately after subsection (2):
- “(3) In relation to rural water supply, the functions of the Authority shall include -
- (a) the monitoring and enforcement of technical standards and service quality applicable to rural water supply and sewerage services;
 - (b) the facilitation of efforts to expand rural water and sewerage services.”.

Review and setting of tariffs, rates and charges

8. Section 24 of the Principal Act is repealed and the following section is substituted:

- “24 (1) A service provider shall not -
- (a) offer service unless it has, prior to offering such services, filed its tariffs and rates with the Authority ; and
 - (b) make changes except as provided in the section below on rates and charges or other terms of the service after applicable tariffs have been filed with the Authority.
- (2) Where the Authority permits a service to be offered under contract as well as under tariff, the tariff provision shall prevail in the event of a conflict or dispute between the tariff and a contract.
- (3) A service provider shall submit proposals in writing to the Authority, of the tariffs, rates and charges it intends to apply for the use of its systems, facilities and others.
- (4) Tariffs shall contain all relevant information concerning rates and charges for services, including deposits, non-recurring charges, monthly charges as well as terms and conditions applicable to the provision of services, including rights and remedies available in the event of unauthorised charges or other disputes or claims over billing or provision of services.
- (5) Tariffs proposed by a licensee shall be effective three calendar months after filing with the Authority unless the Authority issues a counter-proposal or notice of modification to the licensee within that period.
- (6) Notice of any such filing shall be -

- (a) published by the Authority in a newspaper circulating within the country; and
 - (b) publicised using other local media for public information to allow consumers to comment on the reasonableness of the tariffs.
- (7) A failure to make a counter-proposal, modification or to approve a proposed tariff shall entitle a licensee making a proposal to impose the tariff proposed and the Authority shall be deemed to have approved the proposed tariff and shall publish it in the Government Gazette.
- (8) Where the Authority and a licensee fail to reach an agreement on a proposed tariff and counter proposal, the decision of the Authority shall be final.
- (9) All tariff proposals approved in terms of this Act shall come into force and effect from the date of such approval.
- (10) A licensed service provider shall make tariffs available to the public.
- (11) All tariffs filed with the Authority shall be kept complete, accurate and up-to-date.
- (12) After a tariff has been filed with the Authority and has come into force and effect, no charges may be made in the rates, charges or other terms of service relating to all the services provided under the tariff, except upon the filing and review of tariffs as provided in this Act.
- (13) Tariffs shall -
 - (a) be accompanied by all accounting and costing information that the Authority may require; and

- (b) comply with all other requirements and conditions applicable to corresponding licences.
- (14) In determining whether charges require to be modified, the Authority shall take into account -
- (a) the extent to which the prevailing tariffs and charges are able to finance the licensed activities, including any surplus or shortfall in the period of the current charges;
 - (b) the extent to which the underlying costs of carrying out licensed activities have changed since the time of setting the current charges;
 - (c) the extent to which the costs of carrying out the licensed activities is likely to alter materially during the period of the next charge;
 - (d) the requirements of licensed activities in respect of operating and capital expenditure during the period of the next charge; and
 - (e) any other material factors, including efficiency of the licensee, affordability of the service and any Government policies applicable on subsidies, which the Authority considers appropriate in determining the future revenue requirements of the licensee.”.

Reporting

9. Section 28 of the Principal Act is amended in subsection (2) by deleting paragraphs (e) and (f) and substituting the following paragraphs:

- “(e) the development of private sector participation in the electricity sector and water supply and sewerage services sectors; and
- (f) the progress of the electrification, water supply and sewerage services programmes throughout the country.”.

Appointment and Duties of Inspectors

10. Section 30 of the Principal Act is amended -
- (a) in paragraph (c) by deleting “and” at the end of the Paragraph; and
 - (b) by inserting immediately after paragraph (c) the following paragraph and renumbering subsequent paragraph accordingly;
 - “(d) examine, periodically and in special instances, the reticulation system of the licenced operator.

Technical standards and type approval

11. Section 31 of the Principal Act is amended -
- (a) in subsection (4) by deleting “electricity” wherever it appears in the subsection; and
 - (b) by inserting the following subsections immediately after subsection (4):
 - “(5) The Authority shall establish technical standards applicable to water supply or sewerage equipment to ensure against harm to the networks or service or to public health and safety and the environment.
 - (6) The Authority shall prescribe rules specifying the types of water supply or sewerage services equipment or material which may be used for providing water supply and sewerage services or for operating the system or for connecting to the network.
 - (7) A person who provides a water supply or sewerage service or who supplies water supply or sewerage services equipment or material shall not use or supply, as the case may be, any equipment or material which do not comply with the technical standards as prescribed by the Authority.”.

Supply rules and by-laws

12. Section 37 of the Principal Act is repealed and the following section is substituted:

- “37 (1) The Authority may make its own rules and by-laws for the purposes of carrying into effect the provisions of this Act.
- (2) Without limiting the generality of section 36, rules and by-laws made under this Act may be made for the following purposes:
- (a) securing regular and efficient supplies of electricity, water supply and sewerage services;
 - (b) eliminating or reducing the risk of personal injury;
 - (c) requiring licensees to take all prescribed steps to secure compliance with quality standards;
 - (d) ensuring that electricity or water fittings installed and used by persons to whom electricity or water is to be supplied are safe;
 - (e) promoting the efficient use of electricity and water;
 - (f) protecting consumers and the public against the risk of contamination of water; and
 - (g) providing for fees, charges and tariffs.”.

Contents of supply rules and by- laws

13. Section 38 of the Principal Act is amended -

- (a) in paragraph (o) by deleting “and” appearing at the end of the paragraph; and
- (b) by inserting the following paragraphs immediately after paragraph (p):

- “(q) provide for ensuring that collection, treatment, storage and distribution of water is carried out in a regular, fair, and efficient manner so as to protect the safety of consumers and the public generally against risks of contamination and other hazards;
- (r) provide for ensuring that the collection and treatment of sewage and disposal of treated effluents is executed in a regular, fair and efficient manner so as to protect the health of consumers, the integrity of the sewerage system and the environment;
- (s) provide for the exclusion of untreated toxic waste and storm water from the sewerage system;
- (t) provide for a code of practice on works undertaken by any person with respect to water supply and sewage disposal;
- (u) provide for the registration and control of plumbers; and
- (v) provide for fees, charges and tariffs.

Regulated Activities

14. Section 41 of the Principal Act is amended -
- (a) in paragraph (c) by deleting “or”; and
 - (b) by deleting a full stop at the end of paragraph (d) and substituting a semicolon; and
 - (c) by inserting the following paragraphs immediately after Paragraph (d);
 - (e) water treatment and production;
 - (f) transmission of water;

- (g) the distribution of water by reticulation system;
- (h) supply of water to premises;
- (i) storage of water for purposes of treatment, distribution or onwards supply;
- (j) delivery of water to trunk main pipe lines or main pipe lines where the water so delivered is not produced by another licensed operator; and
- (k) treatment and disposal of sewerage by sewerage system.”.

Sale of production capacity

15. Section 43 of the Principal Act is repealed and the following is substituted:

“Except to the extent that the Authority may, in the by-laws and after consultation with the Minister and licensed operators, specify that persons participating in electricity generation or water treatment and production in Lesotho shall not sell:

- (a) production capacity; or
- (b) electricity or water output,

to any person other than an authorised electricity or water supplier.”.

Self supply of electricity and water

16. Section 44 of the Principal Act is repealed and the following is substituted:

“No by-laws shall be made in relation to this section for the purpose of exempting from the requirements, persons whose production capacity is used solely for the self-supply of electricity or water.”

Introduction of by-pass sales

17. Section 45 of the Principal Act is amended by deleting subsection (1) and (2) and the following is substituted:

- (1) Without prejudice to the provisions of section 45 at any time following satisfaction of subsections (2) and (3), the Minister may by order and after not less than six months, consultation with all licensed operators and the Authority, permit the sale of electricity or water by providers of production capacity to eligible consumers to the extent and subject to the terms specified in such order.
- (2) The Authority shall prepare a report stating that the electricity or water markets in Lesotho are sufficiently stable for it to be in the public interest; and that the sale of electricity or water by providers of production capacity directly to eligible customers be permitted to the extent specified in the report.

Conditions of distribution and supply licences

18. After section 63 of the Principal Act, the following section is inserted:

“Conditions of water supply and sewerage disposal licences

63A. Without prejudice to the generality of section 50, a licence authorising provision of water or sewerage services shall include the following conditions:

- (a) requiring a licensed water and sewerage services provider to procure goods, materials and services competitively;
- (b) prohibiting a licensed water and sewerage services provider from engaging in designated activities other than the provision of water or sewerage services;
- (c) relating to the establishment of tariffs which a licensed water and sewerage services provider may charge consumers and the calculation of tariffs;

- (d) requiring a licensed water and sewerage services provider to maintain a contingency fund for purposes of dealing with emergency repairs that may arise;
- (e) regulating cross subsidy between different categories of consumers;
- (f) requiring a licensed water and sewerage provider to prepare and maintain a water supply code; and
- (g) requiring a licensed water and sewerage services provider to publish codes of practice in relation to the payment of bills by consumers, the disconnection of services to consumers, the provision of services to the elderly and the disabled, the efficient use of water services by consumers and the handling of complaints.”.

Type of Offences

19. Section 99 is amended in subsection (1)(c) by deleting “of electricity”.

Service offences

20. Section 101 is amended by -

- (a) deleting “or” in paragraph (d); and
- (b) inserting the following paragraphs immediately after paragraph (d) and renumbering subsequent paragraph accordingly;
 - “(e) interferes with any plant or equipment used for production, distribution or supply of water or sewerage services or causes anything that is calculated to interfere with or damage any such plant or equipment;
 - (f) uses a water or sewerage service requiring a licence knowing it to be unlicensed;
 - (g) provides, without being licenced, water or sewerage services requiring a licence;

- (h) damages water or sewerage services facilities and assets belonging to another person; or”.

General duties of distribution companies

21. After section 110 of the Principal Act the following section is inserted:

“General duties of water supply and sewerage services provision companies

110A (1) Every water supply and sewerage services provision company shall -

- (a) develop, maintain and operate a safe, efficient and economical water supply and sewerage services system; and
- (b) develop, maintain, review and modify customer complaints mechanism”.

Transitional Provisions

22. After section 112 of the Principal Act, the following section is inserted:

“113. Transitional provisions

113. (1) A person lawfully providing water supply and sewerage services before the coming into operation of this Act shall be deemed to be a licensee under this Act.
- (2) The Authority shall modify the terms of any licences or authorisation granted before the coming into operation of this Act so that they are subject to and in conformity with the requirements of this Act.”

Schedules

23.

Schedule I

The heading of the schedule is amended by inserting "and water" after "electricity".

Schedule II

The heading of the schedule is amended by inserting "and water" after "electricity".

GOVERNMENT NOTICE NO. 16 OF 2011

The Parliament of Lesotho**Statement of Objects and Reasons of the
Lesotho Electricity Authority (Amendment) Act, 2011**

**(Circulated by the authority of the Minister responsible for
natural resources)**

The purpose of the LEA (Amendment) Act, 2011 is to amend the Lesotho Electricity Act 2002, as amended, in order to create a multi-sector regulation of water and electricity supply and services under one Authority.

The Bill provides that the short title of the Act shall now be changed from the Lesotho Electricity Authority Act to the Lesotho Electricity and Water Authority Act.

The Bill further provides for various disciplines of people that could be appointed as Board Members with their qualifications, powers and duties clearly spelt out.

The Bill further provides that Board Members with electricity related qualification shall not be less than two and in the same manner those with water related qualifications shall not be less than two.

The Bill provides that the Authority shall have sole and exclusive power to regulate electricity sector and the water sewerage services sub-sector, fees and tariffs charged and standards of services to be provided by water services to be provided by water services and sewerage providers.

The Bill provides that there shall be reporting on the progress of the electrification, water supply and sewerage services programmes all over the country. The Bill further provides for offences for non-compliance with electricity and water service rules and regulations, as well as several duties of water supply and sewerage companies.

The Bill further provides for transitional provisions to accommodate those water supply and sewerage services who operated before the coming into effect

of this Act to be deemed to have been licensed under this Act, and that the conditions of the licenses, authorisation granted before coming into effect of this Act shall be modified to be in conformity with this Act.

