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CHAPTER 65

ELECTRICITY SUPPLY

JR 17 of 1971
Act 21 of 2000
Act 13 of 2010
Act 37 of 2019

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ELECTRICITY SUPPLY

To provide for matters connected with the generation and supply of electricity at Port Vila and Luganville, and to other areas.

1. Interpretation

In this Act, unless the contrary intention appears –

"concessionaire" means the person or an entity granted the sole concession under a concession agreement for the manufacture and supply of electricity within a concession area;

"concession agreement" means an concession agreement entered into under section 1A;

"concession area" means the geographic area specified in the concession agreement as the concession area;

"Director" means the Director of Energy;

"independent power producer" means a person or an entity that is not a concessionaire, but owns renewable energy facilities to generate and sell wholesale electricity to a concessionaire in accordance with a power purchase agreement;

"licence" means a licence issued by the Director under section 1AB;

"licensee" means a holder of a licence;

"Minister" means the Minister responsible for energy.

"power purchase agreement" means a long term contract under which a concessionaire agrees to purchase electricity directly from an independent power producer on such terms as agreed by the independent power producer and the concessionaire;

"Utilities Regulatory Authority" means the Utilities Regulatory Authority established under section 4 of the Utilities Regulatory Authority Act No. 11 of 2007, and includes any individual performing any function or exercising any power of the Authority.

1A. Concession agreement granting sole concession for electricity

(1) The Minister may, on the approval of the Council of Ministers, enter into an concession agreement granting a person the sole concession for the supply of electricity within such areas as are specified in the concession agreement for a specified period.

(2) Nothing in the concession agreement is to be taken to affect the supply of electricity by the Government under the Supply of Electricity (Districts) Act [Cap. 96] outside of the concession area while the concession agreement remains in force.

1AA. Internal Screening Committee

(1) The Internal Screening Committee is established.

(2) The Committee is responsible for screening applications made in accordance with section 1AB.

(3) The Committee consists of the following members:

(a) the Director as the Chairperson; and

(b) the Director of the Department of Local Authorities; and

(c) the Director of the Department of Lands; and

(d) the Director of the Department of Environment Protection and Conservation; and

(e) the Director of the Department of Finance and Treasury; and

(f) a representative of the Chamber of Commerce and Industry nominated by the President of the Chamber of Commerce and Industry; and

(g) a representative of the Utilities Regulatory Authority nominated by its Chief Executive Officer.

(3) The quorum for a meeting of the Committee is the Chairperson (or his or her alternate) and 4 other members present at that meeting.

1AB. Granting of a licence

(1) This section applies to an independent power producer.

(2) Subject to section 1B, an independent power producer must apply for a licence to the Director if that independent power producer intends to:

(a) generate, transmit, distribute, bulk store or feed out of bulk storage electricity or supply; or

(b) own or operate any infrastructure that generates, transmits, distributes or stores electricity, or feeds electricity out from storage; or

(c) sell electricity to a concessionaire.

(3) The application must be in the prescribed form and be accompanied by the prescribed application fee.

(4) The Director must, within 14 days of receiving the application, provide the application to the Committee.

(5) The Committee must, when screening the application, be satisfied:

(a) that there is a form of acceptance from the concessionaire to receive the supply of electricity from the applicant; and

(b) with the character and competence of the applicant to undertake the activities for which the licence is required; and

(c) with the financial credentials of the applicant, having regard to the scale and nature of the risks the applicant's infrastructure may pose to any other interconnected infrastructure and the risks (if any) to the public, if the licence is for the sale of electricity; and

(d) that as a result of any new infrastructure that is to be built, the applicant has the approval under the Preliminary Environmental Assessment and Environmental Impact Assessment under the Environmental Protection and Conservation Act [CAP 283]; and

(e) that the electricity that is to be generated or supplied is of a quality suitable for the general supply network; and

(f) that there will be no adverse impact on the safety and reliability of the network.

(6) Subject to subsection (8), the Director may, on the advice of the Committee, grant a licence with or without conditions or refuse to grant a licence.

(7) The licence granted by the Director must specify the area in which the licence applies.

(8) The Director must not grant a licence unless the person pays the prescribed licence fee.

1AC. Suspension of a licence

(1) If the Director is satisfied that:

(a) there is a breach of a condition of a licence; or

(b) there is a breach of a provision of this Act or its Regulations,
the Director must serve a notice to the licensee as required under subsection (2).

(2) A notice must specify:

(a) the condition of the licence or provision of the Act or its Regulation that was breached; and

(b) the period in which the breach is to be rectified.

(3) If the licensee fails to rectify the breach of the licence or provision of the Act or its Regulation within the period specified in the notice, the Director may:

(a) suspend the licence; and

(b) allow the licensee to provide reasons why the licence should not be suspended within 14 days of receiving the notice.

(4) To avoid doubt, in the case of the suspension of a licence, all operations under the licence must continue as required in the power purchase agreement and the independent power producer is to bear any costs for penalties as provided under the license or provisions of the Act or its Regulations.

1AD. Cancellation of a licence

(1) The Director may cancel a licence, if:

(a) the licensee becomes bankrupt; or

(b) the Director reasonably believes that there is a serious and immediate risk to the electrical infrastructure or to the environment; or

(c) the licensee has provided in the application any false or misleading documents or information; or

(d) the licensee has failed to pay a licence fee within the period specified by the Director.

(2) To avoid doubt, in the case of a cancellation of a licence, all operations under the licence must continue for a period of 3 months till winding up, as required in the power purchase agreement and the independent power producer is to bear any costs for penalties as provided under the license or provisions of the Act or its Regulations.

1B. Supply of electricity to concessionaire

(1) A concessionaire may accept to receive the supply of electricity from an independent power producer.

(2) A concessionaire may, when accepting to receive the supply of electricity,, enter into a power purchase agreement with the independent power producer.

(3) An independent power producer who is directly or indirectly financially related to a concessionaire may supply electricity to a concessionaire if he or she:

(a) informs the Utilities Regulatory Authority, in writing no later than 30 days before supplying electricity, about the precise nature and scope of his or her relationship to the concessionaire; and

(b) provides any document and information that the Utilities Regulatory Authority may require from time to time for the purposes of ascertaining either:

(i) the scope of the relationship; or

(ii) the cost and price of the electricity supplied to the concessionaire.

(4) An independent power producer who contravenes subsection (3) or supplies a false or misleading document or information, commits an offence punishable on conviction to a fine not exceeding VT 1,000,000.

2. Concession agreement

(1) The provisions of this Act are subject to the terms of the following respective concession agreement entered into between the concessionaire and the government, as amended from time to time:

(a) the concession agreement for Port Vila dated 15 August 1986;

(b) the concession agreement for Tanna dated 14 July 2000;

(c) the concession agreement for Malekula dated 14 July 2000.

(2) Subject to subsections (1) and (3), a concession agreement that is entered into after the commencement of this Act, is subject to the terms of this Act.

(3) If there is any conflict or discrepancy between the provision of an concession agreement referred to in subsection (2) and a provision of the Act, the Act prevails.

3. Powers of the concessionaire

It shall be lawful for the concessionaire within the concession area granted to it –

(a) to acquire, construct, operate and control electric lines and works and to generate, supply and sell electricity and to maintain, alter, extend or renew the said lines and works;

(b) to undertake electrical wiring and the installation and servicing of equipment in industrial, commercial and residential premises.

4. Prohibited activities by any other person or entity

(1) It is prohibited for a person or entity to do any of the following unless the person is granted a licence under section 1AB or a concession under section 2:

(a) to generate, transmit, distribute, bulk store or feed out of bulk, storage electricity or supply of electricity; or

(b) to own or operate any infrastructure that generates, transmits, distributes or stores electricity, or feeds electricity out from storage; or

(c) to sell electricity.

(2) If a person contravenes subsection (1), the person commits an offence punishable on conviction to a fine not exceeding VT 1,000,000 for a contravention that occurs on a single day and a further maximum amount of VT 100,000 for every day that the contravention continues.

(3) Subsection (1) does not apply to:

(a) a person that generates electricity exclusively for his or her own use in the person's dwelling house, store, workshop or other facility, vehicle or vessel; or

(b) any actions of the Government under the Supply of Electricity (Districts) Act [CAP 96].

5. Further powers of concessionaire

(1) In the exercise of the powers conferred by this Act, whether in the course of its normal commercial operations or pursuant to any special arrangement with the Minister, it shall be lawful for the concessionaire when so authorised for the purpose by the Minister, by itself, its agents, workmen and labourers, to do all or any of the following –

(a) enter, survey, and take levels of any private or other land or any part thereof and also dig out and remove any earth, stone, soil, sand and gravel whatsoever for the construction, maintenance or alteration of any line or any part thereof or for any other purpose in connection with the works authorised by this Act;

(b) cut and remove from any private or other land any tree or any branch, bough or other part of a tree growing on such lands within 100 feet of any main or sub-main used for conducting electricity and which may in any way affect or interfere with the works;

(c) open or break up any road;

(d) erect and maintain posts, staywires, poles or pillars in or upon any private or other land and attach, place and maintain wires, lines, conduits or other appliances and things necessary for the works in, under, through or over, across or upon any street, road, land, buildings, houses or premises:

Provided that before the exercise of any of the powers herein conferred notice of the concessionaire's intention shall be served on the owner or owners, or other interested party, if any, at least 7 clear days before the exercise of such power.

(2) In the exercise of the powers given by this section, the concessionaire shall not be deemed to acquire any right other than that of user only in or over the soil of any land through, over or under which it causes to be placed any of the works and should any of the works so carried through, over or under any such land cause any loss or damage of a certain and material nature to the owner of such land the concessionaire shall remove or alter such work or the owner shall be entitled to reasonable compensation as provided in section 6.

(3) Every authority given under subsection (1) shall specify whether such power is to be exercised by the concessionaire in its own right or on behalf of the Government and the cost of removal or alteration of such work or the payment of compensation, as the case may be, shall be borne by the concessionaire or the Government.

(4) The powers in this section may be exercised by a concessionaire:

(a) within the concession area of that concessionaire; or

(b) in any other area not being a concession area of another concessionaire.

6. Applications for compensation

(1) A person who:

(a) sustains any damage or loss of a certain and material nature as a result of the exercise by a concessionaire of its powers under section 5; and

(b) is unable to obtain satisfactory compensation from the concessionaire,

may make an application in writing to the Utilities Regulatory Authority for compensation.

(2) An application made under subsection (1) must be made at any time before the expiration of 1 year after the act, matter or thing that allegedly caused such damage or loss.

(3) If a person fails to make an application under subsection (1) within the 1 year period provided under subsection (2), his or her claim for compensation will be barred.

(4) In relation to an application made under this section, the Utilities Regulatory Authority must ensure that it:

(a) hears the application within 30 days of receiving the application and makes a determination within the period set out in section 6A; and

(b) determines the amount of compensation, if any, within a reasonable time.

(4A) The Utilities Regulatory Authority must ensure that the concessionaire or licensee pays the compensation determined under subsection (4) as soon as practicable.

(5) The amount of compensation payable in respect of an application under subsection (1), is to be in such amount as the Utilities Regulatory Authority considers fair and reasonable in all the circumstances.

(6) The Utilities Regulatory Authority is to determine its own procedures in respect of applications made under subsection (1) and is not bound by formality or rules of evidence.

(7) A concessionaire or licensee who fails to pay a compensation determined under subsection (4), commits an offence and is liable on conviction to a fine of VT 10,000 for each day the total amount of compensation is not paid after the date upon which the compensation is required to have been paid.

6A. Period for determining an application

(1) The period the Utilities Regulatory Authority takes to determine an application under section 6 is:

(a) 60 business days, commencing on the date on which the application is received; or

(b) a longer period, if before the end of the 60 day period set out in paragraph (a), the Utilities Regulatory Authority and the applicant agree for a longer period.

(2) Despite subsection (1), if, during the period provided in paragraphs (1)(a) or (b), the Utilities Regulatory Authority , requests further information from the applicant, the period between the request and the giving of the information must not be considered when calculating the period applicable under subsection (1).

(3) The Utilities Regulatory Authority must notify the applicant of any decision it makes at the end of the period set out in subsection (1).

7. Temporary discontinuance of the supply of electricity

(1) A concessionaire or licensee is not liable for damages to any person for any partial or total failure of the supply of electricity due to circumstances beyond the control of the concessionaire or licensee.

(2) Subject to the Utilities Regulatory Authority Act No. 11 of 2007 and its Regulations, and the standards, rules, orders and directives given by the Utilities Regulatory Authority pursuant to the Utilities Regulatory Authority Act No. 11 of 2007, a concessionaire or licensee may temporarily discontinue the supply of electricity.

(3) If a situation is beyond the control of the concessionaire or licensee, making it impossible for the concessionaire or licensee to supply electricity, the concessionaire or licensee may temporarily discontinue the supply of electricity.

8. Offences relating to interruption and theft of electricity

(1) A person who, without lawful excuse or justification:

(a) cuts or impedes the supply of electricity by a concessionaire or a licensee; or

(b) damages any line, meter, apparatus or work installed, constructed or operated by a concessionaire or a licensee; or

(c) steals electricity from a concessionaire or a licensee; or

(d) diverts electricity being supplied to a consumer; or

(e) interferes with an electrical meter installed or operated by a concessionaire or a licensee, whether or not the index of that meter has been altered, commits an offence.

(2) This section does not apply to an officer, servant or agent of a concessionaire acting within the course of their work.

9. Penalties relating to interruption and theft of electricity

(1) A person who commits an offence against section 8 is liable on conviction to:

(a) a fine not exceeding:

(i) three times the repair value of any physical damage caused; or

(ii) three times the retail value of any electricity stolen or diverted; or

(iii) VT100,000; or

(b) imprisonment for a term not exceeding 3 months; or

(c) both such fine and imprisonment.

(2) It is lawful for a concessionaire to demand a bond not exceeding VT100,000 as a precondition to the future supply of electricity to any person found guilty of an offence under paragraphs 8(1)(b) to (e).

10. Facilitation of proof

(1) For the purposes of subparagraphs 9(1)(a)(i) and (ii) the Court is, where precise calculation is not reasonably practicable, entitled to draw inferences as to the relevant value according to such evidence (including prior meter readings) as may be available.

(2) A person is deemed to have stolen electricity from a concessionaire or a licensee if the person makes a connection to any line, meter, apparatus or work installed, constructed or operated by a concessionaire, without the prior approval of that concessionaire or licensee.

(3) A person is deemed to have diverted electricity supplied to a consumer if, he or she makes any connection to the lines through which any consumer is supplied electricity, without the prior approval of that consumer.

(4) The existence of any of the following is prima facie evidence that the person whose electricity is supplied through a meter has interfered with that meter:

(a) where any seal has been broken;

(b) where any apparatus or objects are, or have been, attached or inserted; or

(c) where the meter has been damaged or modified.

11. Fines and other rights of concessionaire or a licensee

(1) Upon conviction of an offence under this Act, a Court may direct that no more than half the amount of any fine imposed may be paid directly to a concessionaire or a licensee.

(2) A payment made in respect of an order under subsection (1) does not extinguish a concessionaire's or a licensee's rights nor the balance of their entitlements otherwise.

12. Power of entry

(1) Subject to the Utilities Regulatory Act No. 11 of 2007, any officer, servant or agent authorised by a concessionaire or a licensee may, at all reasonable times, enter any premises to which electricity is or has been supplied by the concessionaire or the licensee, to inspect:

(a) the electric lines; or

(b) the meters; or

(c) the accumulators; or

(d) the fittings; or

(e) the works; or

(f) the apparatus,

for the supply of electricity belonging to the concessionaire or licensee.

(2) In addition to subsection (1), any officer, servant or agent may enter any premises for the purpose of ascertaining:

(a) the quantity of electricity consumed; or

(b) if a supply of electricity is no longer required; or

(c) if the concessionaire intends to remove and cut off the supply of electricity from any premises.

(3) Without limiting paragraphs (2)(b) and (c), the purpose of ascertaining is to remove any electric lines, meters, accumulators, fittings, works or apparatus belonging to the concessionaire or the licensee.

13. Assault, obstruction, etc., of authorised officer

Any person who shall assault, molest, hinder or obstruct any authorised officer, servant or agent in the exercise of any of the powers conferred by the preceding section or in the execution of any works authorised by this Act or any regulations made thereunder shall commit an offence punishable upon conviction by a fine not exceeding VT 500,000 or imprisonment for a term not exceeding 3 months, or by both such fine and imprisonment.

14. Regulations

The Minister may make regulations, not inconsistent with the provisions of this Act or concession agreement, generally for giving effect to the provisions of this Act and such rules may impose penalties for the breach thereof not exceeding a fine of VT1,000,000.

Table of Amendments (since the Revised Edition 1988)

Long Title	*Amended by Act 21 of 2000*
1	*Substituted by Acts 21 of 2000; 37 of 2019*
1	*Amended by Acts 13 of 2010; 37 of 2019*
1A, 1B	*Inserted by Act 21 of 2000*
1A (heading)	*Substituted by Act 37 of 2019*
1A(1)	*Amended by Acts 13 of 2010; 37 of 2019*
1AA – 1AD	*Inserted by Act 37 of 2019*
1B	*Substituted by Act 13 of 2010*
1B (heading)	*Substituted by Act 37 of 2019*
1B(1) and (2)	*Substituted by Act 37 of 2019*
1B(3) and (4)	*Amended by Act 37 of 2019*
2	*Substituted by Act 13 of 2010*
2 (heading)	*Substituted by Act 37 of 2019*
2(1)	*Amended by Acts 21 of 2000; 37 of 2019*
2(1)(a),(c) and (d)	*Amended by Act 37 of 2019*
2(1)(b)	*Repealed by Act 37 of 2019*
2(1)(c) and (d)	*Re-letter by Act 37 of 2019*
2(2)	*Inserted by Act 21 of 2000*
2(2)	*Repealed by Act 37 of 2019*
2(3) and (4)	*Renumbered by Act 37 of 2019*
2(2)	*Amended by Act 37 of 2019*
2(3)	*Amended by Act 37 of 2019*
3	*Amended by Act 21 of 2000*
4	*Amended by Act 21 of 2000*
4	*Substituted by Act 13 of 2010*
4	*Repealed by Act 37 of 2019*
5(4)	*Inserted by Act 13 of 2010*
6	*Substituted by Act 13 of 2010*
6(2)	*Amended by Act 21 of 2000*
6(4)(b)	*Amended by Act 37 of 2019*
6(4)(c)	*Repealed by Act 37 of 2019*
6(4A)	*Inserted by Act 37 of 2019*

6(7)	*Inserted by Act 37 of 2019*
7	*Substituted by Act 37 of 2019*
8 – 11	*Substituted by Act 13 of 2010*
8(1)(a) – (c)	*Amended by Act 37 of 2019*
8(1)(e)	*Amended by Act 37 of 2019*
9(1)(a)(i)	*Amended by Act 37 of 2019*
10(2)	*Amended by Act 37 of 2019*
11 (heading)	*Amended by Act 37 of 2019*
11(1) and (2)	*Amended by Act 37 of 2019*
12	*Substituted by Act 37 of 2019*
13	*Amended by Act 13 of 2010*
14	*Amended by Acts 13 of 2010; 37 of 2019*
Whole of the Act	*Amended by Act 37 of 2019 agreement replaced with concession agreement*