



REPUBLIC OF VANUATU

**ELECTRICITY SUPPLY (AMENDMENT)
ACT NO. 37 OF 2019**

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REPUBLIC OF VANUATU

Assent: 10/01/2020
Commencement: 24/04/2020

ELECTRICITY SUPPLY (AMENDMENT) ACT NO. 37 OF 2019

An Act to amend the Electricity Supply Act [CAP 65].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Electricity Supply Act [CAP 65] is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF ELECTRICITY SUPPLY ACT [CAP 65]

1 Whole of the Act

Delete all references to “agreement” (wherever occurring), substitute “concession agreement”

2 Section 1

Insert in their correct alphabetical positions:

““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;

“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;”

3 Section 1 (Definition of “concessionaire”)

Repeal the definition, substitute

““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;”

4 Section 1 (Definition of “concession area”)

Repeal the definition, substitute

““concession area” means the geographic area specified in the concession agreement as the concession area;”

5 Section 1(Definition of “Minister”)

Delete “power”, substitute “energy”

6 Section 1A (Heading)

Repeal the heading, substitute “Concession agreement granting sole concession for electricity”

7 Subsection 1A(1)

- (a) Delete “on behalf of the Government”, substitute “on the approval of the Council of Ministers”
- (b) Delete “outside of Port Vila and Luganville”

8 After section 1A

Insert

“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.”

9 Section 1B (Heading)

Repeal the heading, substitute “Supply of electricity to concessionaire”

10 Subsections 1B(1) and (2)

Repeal the subsections, substitute

- “(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.”

11 Subsections 1B(3) and (4)

Delete “A person”, substitute “An independent power producer”

12 Section 2(Heading)

Repeal the heading, substitute “Concession agreement”

13 Subsection 2(1)

Delete “contracts of concession”, substitute “concession agreement”

14 Paragraphs 2(1)(a), (c) and (d)

Delete “contract of concession”, substitute “concession agreement”

15 Paragraph 2(1)(b)

Repeal the paragraph.

16 Paragraphs 2(c) and (d)

Re-letter the paragraphs as “(b)” and “(c)”

17 Subsection 2(2)

Repeal the subsection.

18 Subsections 2(3) and (4)

Renumber the subsections as “(2)” and “(3)”

19 Subsection 2(2)

Delete “subsection (4)”, substitute “subsections (1) and (3)”

20 Subsection 2(3)

- (a) Delete “subsection (3)”, substitute “subsection (2)”
- (b) Delete “, unless the Minister or the Utilities Regulatory Authority declares otherwise in writing”

21 Section 4

Repeal the section, substitute

“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].

22 Paragraph 6(4)(b)

Delete “; and”, substitute “.”

23 Paragraph 6(4)(c)

Repeal the paragraph.

24 After subsection 6(4)

Insert

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

25 At the end of section 6

Add

“(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.”

26 Section 7

Repeal the section, substitute

“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.”

27 Paragraph 8(1)(a)

Delete “under authority of its concession to a consumer”, substitute “or a licensee”

28 Paragraph 8(1)(b)

Delete “under authority of its concession”, substitute “or a licensee”

29 Paragraph 8(1)(c)

After “concessionaire”, insert “or a licensee”

30 Paragraph 8(1)(e)

After “concessionaire”, insert “or licensee”

31 Subparagraph 9(1)(a)(i)

After “;”, insert “or”

32 Subsection 10(2)

- (a) After “concessionaire” (first and second occurring), insert “or a licensee”
(b) After “concessionaire” (Third occurring), insert “or licensee”

33 Section 11 (Heading)

After “concessionaire”, insert “or a licensee”

34 Subsection 11(1)

After “concessionaire”, insert “or a licensee”

35 Subsection 11(2)

After “concessionaire’s”, insert “or a licensee’s”

36 Section 12

Repeal the section, substitute

“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.”

37 Section 14

- (a) Delete “the terms of any agreement granting a concession to the concessionaire”, substitute “concession agreement”
- (b) Delete “VT100,000”, substitute “VT1,000,000”

38 Transitional provisions

A person operating as an independent power producer immediately before the commencement of this Act must apply for a licence, within 3 months from the commencement of this Act.