

THE UTILITY REGULATORY AUTHORITY BILL
(No. XXXIV of 2004)

Explanatory Memorandum

The main object of this Bill is to provide for the establishment and management of a Utility Regulatory Authority, for the regulation of utility services in the interest of customers and providers of such services.

20 August 2004

A. Ganoo
Minister of Public Utilities

THE UTILITY REGULATORY AUTHORITY BILL
(No. XXXIV. of 2004)

ARRANGEMENT OF CLAUSES

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A BILL

To provide for the establishment and management of a Utility Regulatory Authority

ENACTED by the Parliament of Mauritius, as follows -

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Utility Regulatory Authority Act 2004.

2. Interpretation

In this Act –

"annual report" means the report submitted to the Minister under section 27;

"Appointments Committee" means the Appointments Committee set up under section 9;

"authorised officer" means a person to whom the Board has delegated the powers of the Authority pursuant to section 16;

"Authority" means the Utility Regulatory Authority established under section 4;

"Board" means the Board of the Authority referred to in section 8;

"Chairperson" means the Chairperson of the Board appointed under section 9;

"Commissioner" means a member of the Board appointed under section 9;

"Consolidated Fund" means the Fund specified in section 103 of the Constitution;

"customer" means a person to whom a utility service is provided or is required to be provided under this Act or any Utility legislation;

"Director" means the Director of the Authority appointed under section 14;

"electricity services" means services in respect of the provision of electricity to customers and includes the generation, transmission, distribution or supply of electricity in bulk or otherwise;

"financial year" means the period starting on 1 July and ending on 30 June in the next year;

"licensee" means an undertaking which has been granted an undertaking authorization under the relevant utility legislation to provide any utility service;

"Minister" means the Minister to whom responsibility for the subject of utility services is assigned;

"officer" means any officer appointed under section 15 and includes the Director;

"tariff" means any rate, fee or charge for a utility service;

"Tribunal" means the Regulatory Authorities Appeal Tribunal established under the Regulatory Authorities Appeal Tribunal Act 2004;

"undertaking" means an enterprise involved in the provision of a utility service;

"undertaking authorisation" means the document pursuant to which a licensee is authorised to provide a specified utility service;

"Universal Service Fund" means the Fund established under section 21;

"Utility legislation" means any legislation specified in Part A of the First Schedule;

"utility service" means any service specified in Part B of the First Schedule;

"waste water disposal services" means services in respect of disposal of waste water for customers and includes the collection, conveyance, treatment or disposal of water sullied or contaminated by any matter, in solution or suspension, derived from its use in connection with domestic, agricultural, industrial or other activities;

"water services" means services in respect of the provision of water to customers and includes the sourcing, collection, production, treatment, distribution or supply of water for domestic, agricultural, commercial, industrial or other purposes.

3. Application of Act

This Act shall bind the State.

PART II – OBJECTS AND POWERS OF THE AUTHORITY

4. Establishment of Authority

(1) There is established for the purposes of this Act, the Utility Regulatory Authority which shall carry out such regulatory functions as may be assigned to it under this Act or any Utility legislation.

(2) The Authority shall be a body corporate.

5. Objects of Authority

Subject to the relevant Utility legislation, the objects of the Authority shall be to –

- (a) ensure the sustainability and viability of utility services;
- (b) protect the interests of both existing and future customers;
- (c) promote efficiency in both operations and capital investments in respect of utility services; and
- (d) promote competition to prevent unfair and anti-competitive practices in the utility services industry.

6. Functions and powers of Authority

(1) Subject to the relevant Utility legislation, the Authority may –

- (a) implement the policy of Government relating to applicable utility services;
- (b) grant, vary and revoke licences in respect of a utility service;
- (c) enforce the conditions laid down in an undertaking authorisation;
- (d) regulate tariffs and other charges levied by a licensee in accordance with any rules specified in the relevant Utility legislation;
- (e) mediate or arbitrate disputes between a customer and a licensee, or between 2 or more licensees;

- (f) determine whether a licensee has an obligation to extend a utility service to customers or to an area not adequately supplied with such utility service;
- (g) establish an appropriate procedure for receiving and enquiring into complaints by customers in relation to any utility services; and
- (h) establish and implement adequate systems for monitoring the compliance by licensees with standards and applicable regulations, and making such information publicly available.

(2) The Authority may do all such things as appear requisite and advantageous in furtherance of its objects.

(3) In furtherance of its objects, the Authority shall satisfy itself that licensees are able to operate efficiently and to generate revenues sufficient to finance the provision of utility services.

7. Independence of Authority

Subject to this Act, the Authority shall not, in the exercise of its functions under this Act or a Utility legislation, be subject to the direction or control of any other person or authority.

PART III – MANAGEMENT AND FUNCTIONING OF THE AUTHORITY

8. The Board

- (1) The Authority shall be administered and managed by the Board.
- (2) The Board shall consist of –
 - (a) a Chairperson; and
 - (b) 3 Commissioners,

appointed in accordance with section 9.

9. The Appointments Committee

(1) There shall, for the purposes of this Act, be an Appointments Committee which shall be composed of the President of the Republic, the Prime Minister and the Leader of the Opposition.

(2) The President shall chair every meeting of the Appointments Committee and every decision shall be taken by a majority of the votes.

(3) Two members of the Appointments Committee, including the President, shall constitute a quorum, but where quorum is established by attendance of only 2 members, in the event of an equality of votes, the President shall have a casting vote.

(4) The President shall designate such public officer as he considers appropriate to act as Secretary of the Appointments Committee.

(5) The Secretary shall keep a record of all proceedings of the Appointments Committee.

(6) The Appointments Committee shall, within 3 months of the commencement of this Act and thereafter from time to time as required when a vacancy on the Board arises, appoint the Chairperson and Commissioners.

(7) In the exercise of its functions, the Appointments Committee may –

- (a) call for applications for appointment as Chairperson or Commissioner by advertisement;
- (b) interview such candidates as it considers necessary;
- (c) delegate to such public officer as it may designate, the power to establish a short-list of candidates;
- (d) hold consultations with such person as it considers appropriate.

(8) Notwithstanding subsection (7)(a) and (b), the Appointments Committee may appoint the Chairperson and Commissioners without advertisement or interview.

10. Qualification of Chairperson and Commissioners

(1) The Chairperson and Commissioners shall be persons of high moral and professional integrity, having the relevant qualifications, expertise and experience in either law, economics, business, finance, accountancy or engineering.

(2) A person shall not be appointed as Chairperson -

- (a) unless he –
 - (i) is the holder of a university degree;

- (ii) has not less than 5 years' proven professional, academic or managerial experience in connection with the provision of any utility service; and
 - (iii) has sufficient experience and expertise in a managerial capacity in relation to electricity or water or wastewater services.
- (b) if he is a director, an officer, a shareholder or an employee of, or otherwise holds any active role or has any interest in, any undertaking;
 - (c) if he has been a director, an officer, a shareholder or an employee of, or has otherwise held an active role or had an interest in, an undertaking of any time during a period of 2 years immediately preceding the proposed appointment.
- (3) A person shall not be appointed as Commissioner -
- (a) unless he -
 - (i) is the holder of a university degree; and
 - (ii) has sufficient experience and expertise in relation to electricity or water or wastewater services;
 - (b) if he is a director, an officer, a shareholder or an employee of, or otherwise holds any active role or has any interest in, any undertaking;
 - (c) if he has been a director, an officer, a shareholder or an employee of, or has otherwise held an active role or had an interest in, an undertaking of any time during a period of 2 years immediately preceding the proposed appointment.
- (4) Notwithstanding any other provision of this Act, no person shall be appointed as Chairperson or Commissioner or continue to hold office as Chairperson or Commissioner, where –
- (a) he has been convicted of a crime involving fraud or dishonesty;
 - (b) he has been declared bankrupt;
 - (c) he has a direct or indirect interest in the business of an undertaking; or
 - (d) he is actively involved in politics.

11. Term of office

(1) The Chairperson shall be appointed for a term of 5 years and shall be eligible for reappointment for one further period of 5 years.

(2) Subject to paragraph (6), every Commissioner shall hold office for a term of 5 years.

(3) A Commissioner whose term of office has expired shall be eligible for reappointment but no Commissioner shall serve more than 2 consecutive terms in office.

(4) Subject to this section, the Chairperson and every Commissioner shall be appointed upon such terms and conditions as the Appointments Committee may determine.

(5) Notwithstanding subsection (4), where the appointment of the Chairperson or a Commissioner is being renewed, the terms and conditions of appointment shall not be less favourable to such Chairperson or Commissioner than the terms under which the Chairperson or Commissioner had been appointed during any preceding period.

(6) The Commissioners appointed on the coming into operation of this Act shall be appointed for terms of 3, 4 and 5 years, respectively.

12. Termination of appointment

(1) Where the Appointments Committee has reason to believe that a Chairperson or Commissioner may be guilty of misconduct in the performance of his duties under this Act, the Appointments Committee may –

- (a) suspend the Chairperson or Commissioner, as the case may be ;
- (b) remove the Chairperson or Commissioner, as the case may be, from office where -
 - (i) a person who holds or has held judicial office has been appointed by the President to conduct an investigation into the matter and conducts an investigation into the matter;
 - (ii) the Chairperson or Commissioner, as the case may be, has been given a reasonable opportunity to present his case to the person conducting the investigation under subparagraph (i); and
 - (iii) the person who has conducted an investigation under subparagraph (i) has forwarded to the Appointments Committee a

recommendation that the Chairperson or Commissioner be removed, together with a report setting out the grounds for removal.

(2) The Chairperson or a Commissioner shall not participate in the proceedings of the Board while he is under any investigation.

(3) Where the Chairperson or a Commissioner is removed from office under this section, he shall not be eligible for reappointment as Chairperson or Commissioner or to serve the Authority in any other capacity.

(4) Where the Chairperson or a Commissioner is removed under this section or where the Chairperson or a Commissioner resigns or dies in office, the Appointments Committee shall appoint a person to replace the Chairperson or the Commissioner, as the case may be.

13. Board meetings

(1) The Board shall meet at least once every 3 months.

(2) Subject to subsection (1), a meeting of the Board shall be held at such place and at such time as the Chairperson may determine.

(3) Not less than 3 Commissioners may, by notice in writing, submit a request to the Chairperson to convene a meeting.

(4) Where a request is made under subsection (3), the Chairperson shall convene a special meeting within 21 days of the request.

(5) Where the Chairperson is absent or unable to act or has vacated his office, the Commissioners shall elect one of their number to act as Chairperson.

(6) A Commissioner appointed under subsection (5) shall not act as Chairperson for a period of more than 3 months.

(7) The Chairperson and 2 Commissioners shall constitute a quorum for any meeting of the Board.

(8) Every decision shall be taken by a majority of votes of the members entitled to vote and, in case of an equality of votes, the Chairperson shall exercise a casting vote.

(9) The Chairperson or a Commissioner shall, in relation to any matter before the Authority in which he, or any person related by blood or marriage to the Chairperson or the Commissioner, has a pecuniary or other material interest -

- (a) disclose the nature of that interest in writing at or before the meeting convened to discuss that matter;
- (b) refrain from taking part in any deliberation of the Board relating to that matter; and
- (c) leave the meeting during the time the matter is being deliberated at the meeting.

(10) The Chairperson or any Commissioner may resign his office by notice in writing addressed to the President of the Republic, provided such notice is given not less than 30 days prior to the date on which the resignation is to take effect.

(11) Subject to this section, the Board shall regulate its proceedings in such manner as it thinks fit.

(12) For the purposes of subsections (7) and (8), “Chairperson” includes a Commissioner elected to act as Chairperson under subsection (5).

14. Director

(1) The Board shall appoint a Director on such terms and conditions as it thinks fit.

(2) The Director shall be the chief executive officer of the Authority.

(3) The Director shall be responsible for the execution of the policy of the Authority, for the implementation of the decisions of the Board, and more generally for carrying out the day-to-day management and administration of the Authority.

(4) In the exercise of his functions, the Director shall act in accordance with such directives as he may receive from the Board.

(5) The Director shall, where he is required to do so by the Chairperson, attend any meeting of the Board.

15. Staff of Authority

(1) The Authority may, on such terms and conditions as it thinks fit, employ such officer as may be necessary for the proper discharge of its functions.

(2) Every officer of the Authority shall be under the administrative control of the Director.

(3) It shall be a term of the contract of employment of every officer that -

- (a) he shall not acquire an interest of any kind in any entity which is a licensee, or which has entered into a contract with the Authority; and
- (b) where he holds an interest referred to in paragraph (a) or acquires such an interest, by succession or otherwise, he shall, unless the Authority determines otherwise, forthwith dispose of that interest.

16. Delegation of powers within Authority

The Board may, where appropriate, delegate such powers of the Authority as may be necessary to the Chairperson, the Director or to any other officer of the Authority, for the effective performance of the functions conferred on the Authority under this Act, other than the power to -

- (a) borrow money;
- (b) grant, revoke, suspend or amend an undertaking authorisation;
- (c) determine, approve or modify a tariff; or
- (d) appoint staff or set their level of remunerations.

17. Right of access to information

- (1) The Authority may -
 - (a) inspect any record kept by a licensee for the purposes of this Act or the relevant Utility legislation;
 - (b) request in writing a licensee to provide the Authority with such information as it may from time to time require with respect to the operation of its undertaking;
 - (c) hold a public hearing, in such manner as may be prescribed, in relation to a matter of significant public importance which is being considered or the subject matter of an investigation which is carried out by it;
 - (d) request in writing a licensee to submit, periodically or as and when required, any information, books, accounts or other document relevant to the carrying out by the Authority of its responsibilities under this Act and

the relevant Utility legislation, in such manner as may be determined by the Authority, provided that a person shall not be compelled to provide information which such person cannot reasonably be expected to obtain.

- (2) Any person who -
- (a) destroys, tampers or conceals any information book, accounts or other document likely to be required in relation to a request made by the Authority under subsection (1);
 - (b) without reasonable excuse, fails to comply with a request made by the Authority under subsection (1),

shall commit an offence.

PART IV - FUNDING OF THE AUTHORITY

18. General Fund

- (1) The Authority shall establish a General Fund -
- (a) into which monies received by the Authority shall be paid; and
 - (b) out of which all payments required to be made by the Authority shall be effected.
- (2) The General Fund shall be managed by the Authority.
- (3) The Authority may, in furtherance of its objects and in accordance with the terms and conditions under which funds may have been obtained, charge to the General Fund all remuneration, allowances, salaries, fees, pensions and superannuation fund contributions, working expenses, travel expenses and all other charges necessarily arising.
- (4) The Authority shall, not later than 3 months before the commencement of each financial year, prepare a detailed proposed budget of income and expenditure for that financial year.
- (5) Notwithstanding any other enactment, any surplus in the General Fund at the end of any financial year shall be credited into the Universal Service Fund.

19. Funds of Authority

The funds of the Authority shall consist of -

- (a) fees, charges and other payments to the Authority from licensees, as provided for under any Utility legislation;
- (b) such amounts as may be received from the Consolidated Fund; and
- (c) such other funds accruing to the Authority from any other source authorised by law.

20. Accounts of Authority

The Statutory Bodies (Accounts and Audit) Act shall apply to the Authority.

PART V - UNIVERSAL SERVICE FUND**21. Universal Service Fund**

There is established for the purposes of this Act a Fund which shall be known as the Universal Service Fund.

22. Objects of Universal Service Fund

The objects of the Fund shall be to –

- (a) finance the extension of utility services to customers or areas not provided with adequate utility services; and
- (b) provide for subsidies or other forms of financial assistance necessary to enable licensees to provide utility services to any category of customers, the provision of which utility services would otherwise have proven uneconomical for such licensees.

23. Funding of Universal Service Fund

(1) The Universal Service Fund shall consist of -

- (a) such contributions as are made by licensees under subsection (2) ;
- (b) such amounts as may be received from the Consolidated Fund; and

(c) any surplus under section 18(5).

(2) Every licensee shall pay into the Universal Service Fund such contribution as may be prescribed.

(3) Any person who fails to comply with this section shall commit an offence.

24. Management of Universal Service Fund

(1) The Authority shall manage the Fund and ensure that the contributions received are sufficient to enable it to meet the objects of the Fund specified in section 22.

(2) The Authority shall keep separate accounts under the Universal Service Fund in respect of each of the applicable utility services and shall not use funds accumulated with respect to one sector in connection with another sector.

PART VI - ACCOUNTABILITY OF THE AUTHORITY

25. Maintenance of public register

(1) The Authority shall maintain in such written form as it may determine, a public register.

(2) The register shall be made freely available to the public for inspection during normal office working hours.

(3) The Authority shall cause to be entered in the register in a timely manner every -

(a) undertaking authorisation, either granted by the Authority or administered under the relevant Utility legislation as well as its particulars, modification, revocation or exemption; and

(b) regulatory decision by the Authority together with filings, reasoning, appeals and reconsiderations where applicable.

26. Publication of rationale for regulatory decisions

(1) The Authority shall give public notice of any decision made under this Act or the relevant Utility legislation, where the decision relates to -

(a) the establishment or adjustment of the levels of tariffs charged to customers for utility services;

- (b) the establishment or amendment of the service standards for utility services;
- (c) the establishment or amendment of the levels of penalties payable by a licensee under a Utility legislation;
- (d) the grant, suspension and revocation of any undertaking authorisation;
- (e) amendment or exemption to any undertaking authorisation that is sufficiently material to warrant public disclosure; and
- (f) such other matters as may be provided in the relevant Utility legislation.

(2) The public notice under subsection (1) shall be published in 2 daily newspapers of widespread national circulation on 3 consecutive days, within 30 calendar days of the day on which such decision has been made.

(3) Each public notice shall indicate that a detailed rationale for supporting the decision of the Authority is available for public consultation, and shall give indication as to how, when and where such decision may be consulted by any interested party.

27. Annual report

(1) The Authority shall, within 3 months of the end of each financial year, submit to the Minister an annual report covering -

- (a) the activities of the Authority carried out during the preceding financial year;
- (b) the detailed performance of each licensee during the preceding financial year;
- (c) its proposed work program for the following year, its current financial condition and projected financial condition for the next year and next 3 years; and
- (d) any event related to the regulation of utility services.

(2) The Authority may determine the format of its annual report, provided that it allows for a comprehensive, accurate and transparent presentation of the information required under subsection (1).

(3) The issuance of the annual report shall be announced in 2 daily newspapers of widespread national circulation, and the annual report shall be made available to the public for inspection within 60 days of such announcement.

28. Right of appeal

Any person aggrieved by a decision of the Authority in respect of the performance of its duties and powers under this Act may appeal to the Tribunal within 21 days of the date on which the decision is made known to that person.

PART VII - MISCELLANEOUS

29. Powers of Minister

(1) The Minister may issue general policy recommendation to the Authority on matters concerning utility services to the extent that such recommendation is not inconsistent with this Act or the relevant Utility legislation.

(2) Notwithstanding subsection (1), the Minister may issue any directives in relation to -

- (a) the implementation of the general policy of the Government with respect to utility services; and
- (b) the extension of any utility service to customers in areas not provided with adequate utility service.

(3) Any directive issued under subsection (2) with respect to the grant of any subsidy or other financial assistance by any licensee to any category of customer shall be established and implemented in a transparent manner, and any such subsidy or financial assistance shall be duly and separately accounted for by each licensee.

(4) The Minister shall, with respect to the formulation and the implementation of the policy of the Government, ensure co-ordination with environmental regulatory agencies, and provide advice respecting policies and procedures for appropriate environmental regulation of utility services and undertakings.

(5) The Minister may request the Authority to furnish him with such information as the Authority is empowered to obtain, to formulate policy on regulated utility services, subject to the confidentiality requirements provided for under section 33.

30. Protection from liability

(1) No liability, civil or criminal, shall attach to the Chairperson, any Commissioner or any officer of the Authority in respect of any act or omission done in good faith and in the execution or intended execution of his duties under this Act.

(2) The provision of subsection (1) shall be in addition to and shall not derogate from the Public Officers' Protection Act, and for the purposes of that Act, the Chairperson, Commissioners, officers and employees of the Authority shall be deemed to be public officers or persons engaged or employed in the performance of a public duty.

31. Exemptions

(1) Article 910 of the Code Napoleon shall not apply to the Authority.

(2) Notwithstanding any other enactment, the Authority shall be exempt from payment of all charges, duties, fees, rates, taxes on income and any other taxes.

(3) No registration duty shall be payable in respect of any document signed or executed by the Authority or under which it is the sole beneficiary.

32. Declaration of assets

(1) Subject to subsection (2), the Chairperson, every Commissioner and the Director shall file with the Independent Commission Against Corruption established under the Prevention of Corruption Act 2002, a declaration of their assets and liabilities in the form specified in the Second Schedule to this Act –

- (a) not later than 30 days after their appointment; and
- (b) upon termination of their appointment.

(2) Where, subsequent to a declaration made under subsection (1), the balance of assets and liabilities is so altered as to be reduced or increased in value by a minimum of 1,000,000 rupees, the Chairperson, Commissioner or Director shall make a fresh declaration.

(3) No declaration of assets filed under subsection (1) or subsection (2) shall be disclosed to any person except with the consent of the Chairperson, Commissioner or Director, as the case may be, or on reasonable grounds being shown, by order of a Judge.

(4) Any person who fails to comply with subsection (3) shall commit an offence.

33. Confidentiality

- (1) The Chairperson, every Commissioner and officer shall –
 - (a) maintain, and aid in maintaining, the confidentiality of any matter which comes to his knowledge in the performance or as a result of his duties under this Act but without prejudice to any requirements of the Authority itself in respect of disclosure of such matters to the public as required under the Act;
 - (b) not reveal to an unauthorised person any matter referred to in paragraph (a).
- (2) The Authority shall ensure that all third parties dealing with the Authority shall be subjected to the same confidentiality obligations as specified in subsection (1).
- (3) Any person who, without reasonable excuse or lawful authority, contravenes this section, shall commit an offence.

34. Penalties

Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

35. Regulations

- (1) The Board may, after consultation with the Minister, make such regulations as it thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide –
 - (a) for the levying of fees and taking of charges;
 - (b) for the amount of contribution to be paid pursuant to section 23; and
 - (c) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

36. Consequential amendments

(1) Subject to subsections (2) and (3), the Schedule to the Statutory Bodies (Accounts and Audit) Act is amended in Part II, by inserting the following item in its appropriate alphabetical order –

Utility Regulatory Authority

(2) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act to 30 June next following shall be deemed to be the first financial year of the Fund.

(3) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall apply in relation to the first financial year of the Fund.

(4) The auditor to be appointed under section 5 of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

37. Savings

This Act shall not affect the terms or validity of any concession entered with Government, or power purchase agreement signed with the Central Electricity Board, prior to the coming into operation of this Act with respect to the provision of electricity services.

38. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

FIRST SCHEDULE
(section 2)

PART A

Electricity Act

PART B

Electricity services

SECOND SCHEDULE

(section 32)

DECLARATION OF ASSETS AND LIABILITIES

I, of the Utility Regulatory Authority

make oath/solemn affirmation as a and declare that –

- (a) I am unmarried/ married under the system of (*matrimonial regime*)
- (b) My assets and those of my spouse and minor children in Mauritius and outside Mauritius are as follows –

(extent and nature cf interests therein)

- (i) immovable property –
- freehold
- leasehold
- (ii) motor vehicles
- (iii) interest in any partnership, société, joint venture or succession
- (iv) securities including treasury bills, units, etc
- (v) cash in bank
- (vi) cash in hand exceeding 50,000 rupees
- (vii) jewellery and precious metals
- (viii) other assets exceeding 50,000 rupees in the aggregate (*specify*)
- (c) My liabilities and those of my spouse and minor children are as follows –
-
-
-

.....

Signature

Sworn/solemnly affirmed by the abovenamed before me at this day
of

**Master and Registrar
Supreme Court**

/pj20 August