Electricity Act 2010

SAMOA

ELECTRICITY ACT 2010

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ELECTRICITY ACT 2010

2010 No. 23

AN ACT to provide for a new legislative framework for regulating the **electricity** sector, the establishment of the post of the **Electricity** Regulator and the Office of the Regulator, and for related matters.

[Assent date: 19 October 2010]

[Commencement date: 1 December 2011]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART I
PRELIMINARY

1. Short title and commencement – **(1)** This **Act** may be cited as the **Electricity Act** 2010.
(2) This **Act** commences, in whole or in part, on a date or dates nominated by the Minister.

2. Interpretation – In this **Act**, unless the context otherwise requires:

"assets" means any real or tangible property which is essential for generating **electricity** or for providing **electricity** network services;

"base tariffs" means charges to be applied to **electricity** services in order for the **electricity** network services licensee to recover its reasonable costs including a rate of return on investment consistent with other investments of comparable risk;

"Electric Power Corporation" means the Electric Power Corporation established under the **Electric Power Corporation Act 1980**;

"**electricity** network services" means **electricity** transmission and distribution systems ending at **electricity** meters or power supply entering points at consumers' premises, supplying power for resale, and metering, billing, collection, and other services to end-use consumers;

"**electricity** network services licensee", means any entity that is granted a licence to provide **electricity** network services;

"**Electricity** Regulator" or "Regulator" means the Regulator appointed under section 4;

"**electricity** services" means **electricity** generation or **electricity** network services, or both;

“formal decision” means a written decision containing all necessary findings, reasoning, principles and conclusions issued by the Regulator to conclude any tariff approval or licencing proceeding or any other proceeding of substantial public significance;

“generation licence” means a licence to generate **electricity** for sale issued under this **Act**;

“independent power producer” means any generator of **electricity** for sale to the **electricity** network services licensee that is not owned by the **electricity** network services licensee;

“Judge” means a Judge of the Supreme Court of Samoa;

“licence” means a licence granted under section 13;

“licensee” means a person required to be licensed under section 13;

“Minister” means the Minister responsible for the power or **electricity** sector;

“Ministry” means the Ministry responsible for the power or **electricity** sector;

“Notice of Appeal” is a notice issued and served under section 35;

“Panel of Tribunal members” means a panel of the **Electricity** Tribunal members appointed under section 36(1)(b);

“rate of return” means the return allowed on the licensee’s capital investment, including borrowed funds and equity capital;

“reasonable costs” means all costs not resulting from conduct determined by the Regulator to be inconsistent with prudent electric power industry practice;

“Samoa Bureau of Statistics” means the Government body responsible for the preparation of Government statistics and census;

“power system expansion plan” is a plan required under section 27;

“price discrimination” means charging different tariffs to consumers within the same consumer class or charging tariffs such that one class of consumers subsidizes another;

“service licensee” is an entity licensed to provide **electricity** generation or network services to consumers;

“stakeholders” means any individual, group or organisation with an interest or stake in the **Electricity** Regulator’s decision-making activities;

“Tribunal” or “ **Electricity** Tribunal” means the **Electricity** Tribunal established under section 36.

3. Objectives of this Act - The objectives of this **Act** are:

(a) to establish the position of the **Electricity** Regulator who shall exercise independently and transparently the responsibilities, functions and duties assigned or transferred to him or her under this **Act**;

(b) to separate governance and operational responsibilities in the **electricity** sector;

(c) to promote economy, efficiency, reliability and affordability of **electricity** provided by service licensees;

(d) to promote efficient use of **electricity** by consumers;

(e) to promote competition in the generation of **electricity**;

(f) to promote the use of new technology by service licensees to generate, transmit or supply **electricity**;

(g) to create a financially sound **electricity** sector capable of meeting the needs of consumers and the Samoan economy;

(h) to assure protection of consumers, responsiveness to public concerns and effective dispute resolution in the **electricity** sector;

(*i*) to assure the safeguarding of the environment;

(j) to promote the prevailing national energy policies; and

(k) to promote the prevailing national policies on combating climate change.

PART II
REGULATOR

4. Appointment of the Regulator – **(1)** Subject to section 5, there shall be appointed by the Head of State, acting on the advice of Cabinet, a Regulator who shall have and exercise the responsibilities, functions and duties conferred by this **Act** and any other applicable law.
(2) The appointment of the Regulator shall be for a term of 3years, which term may be renewed by the Head of State, acting on the advice of Cabinet, for additional terms of 3 years each.
(3) The appointment of a Regulator under this section shall be in accordance with the terms approved by Cabinet, and shall be implemented and administered in accordance with a contract approved for that purpose by the Attorney General.

(4) A person may be removed as Regulator prior to the completion of a 3year term of an appointment where the person:

(a) at the time of appointment and while holding the position of Regulator, has a conviction or is convicted for any offence, in Samoa or elsewhere—

(i) involving dishonesty or corruption; or

(ii) where the penalty imposed by the Court for such offence includes imprisonment for any period, irrespective of whether such penalty has been or is imposed concerning such conviction; or

(b) is an undischarged bankrupt; or

(c) is determined by a registered medical practitioner to be unable to perform the Regulator's responsibilities, functions, and duties due to any physical or mental incapacity; or

(d) breaches the Code of Conduct in section 19 of the **Public Service Act** **2004**, excluding paragraphs (j) and (*l*) of that section.
(5) The Head of State, acting on the advice of Cabinet, may appoint the Minister or another person to exercise the responsibilities, functions and duties conferred by this **Act** and any other applicable law on the Regulator, on an interim basis, during:

(a) the period until the first Regulator is appointed;

(b) any period of time after a Regulator ceases to hold office and before a replacement is appointed; and

(c) a period of temporary absence or incapacity of the Regulator.
(6) A person appointed under subsection (5) may exercise all of the responsibilities, functions and duties conferred on the Regulator by this **Act** and any other applicable law notwithstanding any other provision of this **Act**.
(7) An appointment under subsection (5) may not continue for a period longer than6 months.
(8) For the avoidance of doubt, a person appointed under subsection (1) may concurrently be appointed as the Regulator appointed pursuant to the **Telecommunications Act 2005** or legislation on broadcasting, or both.

5. Disqualification – **(1)** Subject to this section, a person is not eligible to be appointed or to continue as the Regulator or as a member of the professional staff of the Regulator if the person, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, has any pecuniary or proprietary interest in:

(a) a service licensee; or

(b) a manufacturer or supplier of **electricity** facilities, except where the supply is incidental to the general merchandising of goods by wholesale or retail.
(2) Where any interest prohibited by subsection (1) vests in the Regulator or a member of the professional staff by will or succession for the benefit of the Regulator or a member of the

professional staff, such interest shall be absolutely disposed of within 3months of vesting, and any failure to **act** in accordance with this subsection shall make the Regulator or member of the professional staff liable to disqualification under subsection (1).
(3) For the purpose of this section:

(a) a pecuniary or proprietary interest shall include, but is not limited to, a pecuniary or proprietary interest held by a spouse, parent, child, brother or sister of the Regulator or member of the professional staff; and

(b) the professional staff of the Regulator shall be any member of staff of the Regulator nominated as such by the Regulator, as a class of such persons or individually, or both.

6. Responsibilities, functions and powers of the Regulator – The Regulator shall:

(a) be responsible for the proper and effective administration of this **Act**;

(b) be responsible for providing advice to the Minister and to Cabinet on matters of **electricity** sector policy;

(c) be responsible for ensuring that decisions required of him or her under this **Act** are made independently and transparently, and are in accordance with this **Act**;

(d) set, monitor and enforce **electricity** tariffs to be charged by the **electricity** network services licensee;

(e) issue, monitor and enforce licences;

(f) protect the interests of consumers of **electricity**;

(g) enforce the standards of **electricity** services;

(h) review and approve the **electricity** network services licensee's power system expansion plan and power purchase agreements;

(*i*) implement the national energy policy;

(j) assure the safeguarding of the environment;

(k) support the national policy on combating climate change;

(*l*) provide **electricity** sector policy advice to the Minister and the Government;

(m) impose and collect licence fees or surcharges on retail **electricity** sale revenues to cover its costs of operation;

(n) impose sanctions including penalties for non-compliance with terms and conditions attaching to licences;

(o) require licencees to provide all information necessary to carry out regulatory monitoring and enforcement functions;

(p) inspect and monitor service licensee's operations including entering licensees' premises in order to assure compliance with the licence conditions; and

(q) order licensees to engage independent consultants approved by the Regulator to carry out studies of efficiency and economy of operation and of performance by licensees.

7. Post-employment restriction – (1) Subject to subsection (2), any person who has been appointed as the Regulator under this **Act** shall not seek employment nor be employed by any person or entity that is granted a licence under this **Act**.
(2) This section does not apply to a person who has ceased to be a Regulator appointed under this **Act**, for a period which is not less than 2 years.
(3) A person who contravenes subsection (1) commits an offence and, upon conviction, is liable to a fine not exceeding 1,000 penalty units, and 10 penalty units for each day that the offence continues.
(4) In this section, "employment" means to receive any remuneration for services provided, including but not limited to consultancy services and board membership.

8. Office of the Regulator – (1) There is hereby established an Office of the **Electricity** Regulator, which shall function in accordance with this section.
(2) The Regulator shall be responsible for the management of the Office of the **Electricity** Regulator.
(3) The Office of the **Electricity** Regulator shall consist of the Regulator, the staff of the Office of the **Electricity** Regulator and such other persons as may be seconded or appointed in accordance with this section.
(4) Except as provided in this **Act**, the Regulator and the Office of the **Electricity** Regulator shall function in accordance with the laws governing the public service and the finances of the Government of Samoa, and in particular:

(a) the staff of the Office of the **Electricity** Regulator shall be appointed or employed under the **Public Service Act 2004**;

(b) the Public Service Commission shall appoint such staff on the recommendation of the Regulator; and

(c) subject to section 9, the budget of the Office of the **Electricity** Regulator shall be approved pursuant to the national budgetary process for the Government taking into account any fees or surcharges collected pursuant to this **Act**.
(5) The Minister, acting on the advice of the Chief Executive Officer of the Ministry and of the Regulator, may by notice in writing:

(a) designate 1 or more persons employed by the Ministry or other Ministries or Government organisations to work with the Office of the **Electricity** Regulator on a secondment

basis. Such secondments may be a part-time or full time, and shall last for such period of time as indicated in the notice; and

(b) determine that the Office of the **Electricity** Regulator may share or otherwise utilise support staff, office premises and other resources of the Ministry, or another Government organisation that will include, but not be limited to, the office of the Regulator established pursuant to the **Telecommunications Act 2005** or legislation on broadcasting, or both.
(6) A person who has been appointed or seconded to the Office of the **Electricity** Regulator and to whom the Regulator delegates a responsibility or function or duty in writing, shall perform such responsibilities, functions and duties of the Regulator as specified in the delegation, and a delegation under this subsection may:

(a) authorise a person to make orders or issue licences;

(b) restrict the delegation to specific types of matters, or to a specific period of time;

(c) be subject to terms, conditions or restrictions; and

(d) be revoked by notice in writing.
(7) In addition to the persons appointed or seconded to the Office of the **Electricity** Regulator under this section, the Regulator may appoint such consultants as may be necessary for the efficient performance of the functions of the Regulator.
(8) All persons appointed or seconded under this section shall work under the direction of the Regulator in the discharge of their responsibilities, functions, and duties.
(9) The Regulator shall conduct the affairs of the Office of the **Electricity** Regulator in an open and transparent manner. To this end, the Regulator shall, publish or cause to be published, notices, rules and procedures governing the operation of the Office of the **Electricity** Regulator and the Office's dealings with the public.
(10) The Regulator shall establish an official website for the Office of the **Electricity** Regulator to increase the transparency of the Office's affairs to persons inside and outside of Samoa.
(11) All rules, orders, codes of practice, notices and other important documents issued by the Office of the **Electricity** Regulator regarding the regulation of the **electricity** or power sector shallbe posted on the Regulator's official web site, and published in any other media that the Regulator considers necessary to provide adequate notice to interested persons.
(12) The Office of the Regulator established under the **Telecommunications Act 2005** or any legislation on broadcasting, or both may be the same office or may be deemed to be the Office of the **Electricity** Regulator under this **Act**.

9. Budget of the Office of the Regulator – **(1)** The Regulator shall establish an annual budget for the operations of the Office of the **Electricity** Regulator in line with the fiscal year of the Government of Samoa.
(2) The Regulator may levy an annual surcharge on retail **electricity** sale revenues and assess licence fees in order to source funds for the Office.
(3) The Regulator shall hold public consultation to determine the appropriate level of such annual surcharges and licence fees under subsection (2).

10. Judicial enforcement – **(1)** An order of the Regulator may be made an order of the Supreme Court by filing with the Registrar of the Court a copy of the order certified by the Regulator and may be enforced in the same manner as an order of the Court.
(2) The Regulator may enforce any order of the Regulator made under this **Act** whether or not the order has been made an order of the Supreme Court under subsection (1).
(3) An order of the Regulator may be enforced from the date of the order and not from the date of filing such order with the Court under subsection (1).
(4) The Commissioner of Police and all police officers shall provide such reasonable assistance to the Regulator as the Regulator requires in undertaking the Regulator's responsibilities, functions and duties under this **Act** and any other law.

11. Civil liability – **(1)** Claims made by or against the Regulator shall be made pursuant to the Government Proceedings **Act** 1974.
(2) Despite any other law, no suit or proceeding for any **act** or omission in connection with the responsibilities, functions or duties imposed on the Regulator by this **Act** shall be brought or maintained against a person who:

(a) has been or is the Regulator where such person has been or is acting in good faith; or

(b) has been or is acting under the authority of the Regulator under the **Act** where such person has been or is acting in good faith.

PART III
LICENSING

12. Types of licences – The Regulator may issue two types of licences:

(a) **electricity** network services licences; and

(b) generation licences.

13. Application and grant of licence – **(1)** A person wishing to generate **electricity** other than for their own use or to provide **electricity** network services must apply in writing to the Regulator for a licence to do so.
(2) The Regulator, may upon receiving an application under subsection (1), grant a licence to the applicant provided that the applicant meets the prescribed requirements for obtaining a licence.
(3) A licence granted under this section, shall specify the following matters:

(a) the term of the licence;

(b) the services governed by the licence;

(c) the conditions, including service standards, of the licence;

(d) licence fees;

(e) compensation for the licensee;

(f) monitoring and enforcement of the conditions of the licence;

(g) avenues for dispute resolution.
(4) A licence issued under this **Act** may be granted for a period which is not less than 15 years and may be renewed by the Regulator in accordance with this **Act**.
(5) Where the Regulator refuses an application made under this section, the Regulator shall provide reasons for the refusal in writing to the unsuccessful applicant.

14. Suspension of licence – (1) A licence granted under this **Act** may be suspended by the Regulator where the Regulator is satisfied that there is or has been a repeated breach of this **Act** or of the licence conditions.
(2) Where the Regulator decides to suspend a licence under this section, the Regulator must, prior to suspending a licence, provide notice to the licensee and reasonable time for the licensee to comment on the proposed licence suspension.
(3) In this section, "repeated breach" means a reported breach of this **Act** or of a licence condition occurring not less than 5 times.

15. Revocation of licence – (1) The Regulator may revoke a licence at any time or after restoration of a suspended licence where a licensee commits a further breach or a serious breach or of this **Act** or of the licence conditions.
(2) Where the Regulator decides to revoke a licence under subsection (1), the Regulator must, prior to revoking a licence, provide notice and reasonable time for the licensee to comment on the proposed licence revocation.
(3) In this section:

"further breach" means a reported breach or violation of this **Act** or of a licence condition occurring more than once after the restoration of a suspended licence;

"serious breach" means a reported breach or violation of this **Act** or of a licence condition that results in great public harm, including loss of life, or property damage in excess of $100,000.

16. Offence for operating without a licence – **(1)** No person shall generate **electricity** (provide **electricity** network services unless the person is licensed to do so under this **Act**.

(2) A person who breaches subsection (1) commits an offence and upon conviction is liable to a fine not exceeding 1,000 penalty units, and 10 penalty units for each day that the offence continues.

17. Regulations for issuing of licence – The Head of State, acting on the advice of Cabinet, may make regulations for the issuing, monitoring and enforcing of licences granted under this **Act**.

18. Electricity network services licensee not to sell, transfer or lease assets – An **electricity** network services licensee shall not sell, transfer or lease for more than 6 months to any person any assets, related to the licence without the prior written approval of the Regulator.

PART IV
TARIFFS

19. The Regulator to set tariffs – **(1)** The Regulator shall set all tariffs charged by a licensee.

(2) The Regulator shall set the base tariffs of the **electricity** network services licensee, including a fuel cost adjustment mechanism, within every 3 year period.

(3) When setting the tariffs of an **electricity** network services licensee, the Regulator must consider the following factors:

(a) the likelihood of the tariff to recover the reasonable costs of providing services and to earn a rate of return on investment for the licensee consistent with other investments of comparable risk;

(b) the ability of the low income households to pay for **electricity** services;

(c) the ability of the tariff to promote economy and efficiency of **electricity** services;

(d) whether the tariff will encourage the efficient use of **electricity**;

(e) whether the tariff will avoid price discrimination;

(f) whether the tariff is easy to understand and to apply.

(4) Subject to any financial or other resource constraints, the Regulator shall conduct public consultations prior to making a decision on setting and changing tariffs charged by the

electricity network services licensee.
(5) A licensee who fails to comply with the tariffs set by the Regulator under this section commits a breach of the licence conditions and is, upon conviction, liable to a fine not exceeding 1,000 penalty units, and 100 penalty units for each day that the breach continues.

20. Changes to tariffs – (1) An **electricity** network services licensee proposing to change its tariffs at any time other than the review period specified under section 19(2) shall apply to the Regulator in writing for the Regulator's approval of the change in tariff proposed.
(2) When making an application under subsection (1), the licensee must provide the Regulator all the necessary supporting information and any other information which may be requested by the Regulator regarding the reasons for the change.
(3) The Regulator must make a decision to accept, reject or modify any application regarding tariff change within 6 months of receiving the application.
(4) Where the **electricity** network services licensee applies for a tariff change, the licensee must arrange for the notification to the public of such change through the media as well as inserting such information in its bills to consumers who receive regular **electricity** bills.
(5) The Regulator shall not consider a tariff change for the **electricity** network services licensee until the notification required under subsection (4) is arranged.

21. Power to review tariffs – (1) Despite any other provision of this **Act**, the Regulator may at any time, at the Regulator's own instigation initiate a review of any tariffs imposed by an **electricity** network services licensee.
(2) In carrying out a review under subsection (1), the Regulator must carry out consultations with the licensee and the public.
(3) Where the Regulator finds, following a review under this section, that the tariff is not consistent with the factors listed in section 19(3), the Regulator may direct an **electricity** network services licensee to propose a new tariff subject to the Regulator's approval under this **Act**.
(4) Any failure of an **electricity** network services licensee to follow a direction of the Regulator made pursuant to subsection (3) constitutes a breach of the **electricity** network services licence's conditions and shall be sufficient grounds for the suspension or the revocation of a Licence.

22. Tariff subsidies – (1) Subject to subsection (2), the Regulator may direct that tariff subsidies be granted to specified consumers.
(2) In making a direction for subsidies under subsection (1), the Regulator must:

(a) ensure that such subsidies are targeted to such consumers as may be determined by the Regulator to be from low income households;

(b) ensure that such subsidies are explicit and transparent; and

(c) seek Cabinet approval, for the subsidies in tariffs to be funded by the Government.
(3) In determining what is a low income household under this section, the Regulator shall, prior to making a determination, seek the advice of the Samoa Bureau of Statistics.

23. Setting tariff regulations – The Head of State, acting on the advice of Cabinet, may make regulations prescribing the principles, methodologies and processes for setting tariffs for the Regulator to implement.

PART V
STANDARDS OF ELECTRICITY SERVICES

24. Standards of electricity services to be developed by the Regulator – (1) The Regulator shall develop standards necessary for the provision of reliable, efficient, and safe **electricity** supply, and quality of consumer service.
(2) In developing service standards required under this **Act**, the Regulator shall, prior to formalising any service standards, consult with consumers, technical experts and service licensees.
(3) Service standards developed under subsection (2) shall be formalised by way of regulations made under the provisions of this **Act**.
(4) Compliance with any service standards developed under this section may be imposed as part of the conditions for the issuance of a licence under this **Act**.

25. Regulator to consult with Government for provision of electricity services to rural areas – The Regulator shall consult with the Government to set standards governing the provision of **electricity** services to remote rural areas in Samoa, and assist the Government in providing options for funding sources for extending these services.

PART VI
CONSUMER PROTECTION

26. Regulator's functions relating to disputes between consumers and electricity network services licensee – (1) The Regulator shall, for all intents and purposes, be the Government's representative responsible for resolving disputes between consumers and **electricity** network service licensees.
(2) The Regulator shall, in performing his or her functions under this section:

(a) review and approve the terms of service for the **electricity** network services licensee, including standards for consumer deposits or other measures to secure payments;

(b) monitor the response by the **electricity** network services licensee to consumer complaints;

(c) set standards for metering, billing and collection of tariffs and fees;

(d) investigate and resolve complaints of consumers as to their failure to obtain redress from the **electricity** network services licensee regarding rates, billings or unsatisfactory services;

(e) determine the requirements for fair and reasonable compensation to consumers where damage is proven to have occurred through the **electricity** network services licensee's operations;

(f) appoint a consumer advisory committee, as needed, to advise on issues of importance to consumers, including quality of service, efficiency in attending to emergencies and handling of consumer complaints.

PART VII
POWER SYSTEM EXPANSION PLANNINGAND REVIEW

27. Power system expansion plan – **(1)** An **electricity** network services licensee must develop a power system expansion plan.
(2) A power system expansion plan required under subsection (1) must be produced by the **electricity** network services licensee and must be submitted to the Regulator at the commencement of the Regulator's fiscal year for 2011 or such other year as may be decided by the Regulator.
(3) The power system expansion plan shall be updated 1 year before the triennial tariff review conducted pursuant to section 19(2) and must indicate the **electricity** network services licensee's plan for the next 5 years, describing capital expenditures for proposed network expansion or rehabilitation as well as new power supply requirements.
(4) Where a new power supply is proposed under subsection (3), the plan shall consider and compare, in accordance with criteria determined in writing by the Regulator, all feasible alternatives to ensure the most economic new power supply is selected.
(5) In approving a power system expansion plan, the Regulator shall give preference to cost effective measures and methods that improve the efficiency of the power system and minimise losses of **electricity** or waste of energy.
(6) Subject to this **Act**, any investments made consistently with an approved power system expansion plan may be recovered through **electricity** tariffs.
(7) In developing a power system expansion plan,the **electricity** network services licensee shall consider and compare all feasible alternatives of new power supply, including independent power producers and consumer owned generation.

28. Review power system expansion plan – (1) The Regulator may review an **electricity** network services licensee approved power system expansion plan.
(2) In reviewing a power system expansion plan, the Regulator must consider whether the power system expansion plan:

(a) provides a reliable **electricity** supply consistent with the applicable service standards;

(b) is economically efficient; and

(c) is consistent with the Samoa national energy, economic, environmental and Government community service obligations policies, and other interests.

29. Regulator's prior approval for issuance of stock or long-term debt – (1) An **electricity** network services licenseewho intends to issue stock or enter into a long term debt with any financial institution or person must first apply in writing to the Regulator for approval.
(2) The Regulator may, upon receipt of an application under subsection (1), approve the application where the Regulator is of the opinion that the issuance of stock or long-term debt is consistent with the **electricity** network service licensee's approved power system expansion plan.
(3) An **electricity** network services licensee who fails to seek prior approval under this section commits a breach of the licence conditions, and shall, upon conviction, be subject to a fine not exceeding 1,000 penalty units.
(4) In this section, "long-term" means a period exceeding one calendar year.

30. Regulator's prior approval for entering into power purchase agreements with independent power producers – (1) An **electricity** network services licensee who intends to enter into a power purchase agreement with an independent power producer must first apply in writing to the Regulator for approval.
(2) The Regulator may, upon receipt of an application under subsection (1), approve an application where the Regulator is of the opinion that the purchased power is at least cost, and that the contract is consistent with the **electricity** network services licensee's approved power system expansion plan.
(3) An **electricity** network services licensee which fails to seek prior approval under this section commits a breach of the licence conditions, and is, upon conviction, liableto a fine not exceeding 1,000 penalty units.

PART VIII
PUBLIC CONSULTATION

31. Public input and consultation – (1) Subject to any financial or other resource constraints, the Regulator shall seek public input in all matters having widespread public impact arising from the exercise of his or her duties, functions or responsibilities under this **Act**, and shall provide opportunities for consultation with affected stakeholders arising from any proceedings undertaken under this **Act**.
(2) In seeking public input and carrying out consultations under this section, the Regulator must have regard to the following:

(a) the Regulator must ensure that the Government is kept fully informed of pending proceedings;

(b) the Regulator may, where he or she thinks it appropriate to do so in the public interest, keep the public fully informed of pending proceedings;

(c) the Regulator must consult with licensees, representatives of consumers and other stakeholders it considers have an interest in the matters before it;

(d) the Regulator shall establish and publish public consultation procedures;

(e) the Regulator shall require the **electricity** network services licensee to prepare and distribute a statement of consumer rights and responsibilities;

(f) the Regulator shall maintain an informative and user friendly web site and shall require the **electricity** network services licensee to do so.

PART IX
DISPUTE RESOLUTION

32. Disputes between electricity network services licensee and independent power producers – (1) A dispute arising between **electricity** network services licensee and independent power producers may be referred to the Regulator.
(2) A dispute referred to the Regulator under subsection (1) may be resolved by the Regulator in a manner which the Regulator considers appropriate, and in so doing, the Regulator shall consider setting terms of interconnection with power network and approving any power purchase agreement.

33. Disputes between electricity network services licensee and consumers – (1) Subject to subsection (2), the Regulator may take one of the following actions regarding disputes between the **electricity** network services licensee and its consumer or group of consumers:

(a) assign a member of the Regulator's staff or consultant to attempt to mediate the dispute; or

(b) hear the dispute and issue an order to resolve the dispute.
(2) The Regulator may only take action under subsection (1) where the **electricity** network services licensee certifies in writing that an initial dispute resolution attempt between it and the consumer or consumer group has failed.
(3) Where an **electricity** network services licensee does not attempt initial dispute resolution between it and the consumer or consumer group, the Regulator may direct the **electricity** network services licensee to make necessary arrangements in order to hold an initial dispute resolution.
(4) In this section, "initial dispute resolution" is a process of resolving any disputes between the parties concerned and which does not include the participation of the Regulator.
(5) The Regulator's costs under subsection (1), including but not limited to any travel or other expenses incurred by or on behalf of the Regulator in connection with the Regulator's assistance or intervention, shall be paid to the Regulator by the parties to the dispute.

PART X
APPEALS

34. Appeal of decisions of the Regulator to be filed with the Electricity Tribunal – An appeal relating to a decision made by the Regulator under this **Act** shall be made, in writing, to the **Electricity** Tribunal.

35. Notice of Appeal – (1) An appeal regarding any decision of the Regulator shall be commenced by way of a notice.
(2) A Notice of Appeal under this **Act** must be served upon the Minister and must be accompanied by:

(a) a bank cheque payable to the Minister in the amount of—

(i) in the case of an incorporated body, $100,000; or

(ii) in the case of a natural person, an amount not exceeding $50,000 to be determined by the Tribunal having sufficient regard to the merits of the appellant's case, −

to defray the costs of the Tribunal; and

(b) a signed written undertaking by the appellant to pay damages and all costs from any appeal found by the Tribunal to be frivolous.
(3) The appellant must also serve, on the same date, copies of the Notice of Appeal and accompanying documents on the Regulator and the Attorney General and where relevant, to any other person who may be a respondent or a party to the appeal.
(4) The Notice of Appeal must be served within 30 days after the date of the decision of the Regulator which is the subject of the appeal.
(5) The Notice of Appeal must set out:

(a) the relevant section of the **Act** under which the decision appealed against was made; and

(b) the grounds of appeal which must set out in sufficient detail:

(i) the grounds upon which the appellant contends that the decision appealed against was based on an error of fact or was wrong in law, or both; and

(ii) the grounds upon which the appellant is appealing against the exercise of a discretion by the Regulator.

(6) A deposited funds required under section 35(2)(a) which have not been used for the purpose of expediting an appeal shall be returned to the Appellant upon the final determination of the appeal.

36. Electricity Tribunal – (1) There shall be an **Electricity** Tribunal to be comprised of a presiding member and 2 other members, appointed as follows:

(a) the presiding member shall be presided over by a Judge or a lawyer who is qualified to be a Judge, who shall be appointed by the Chief Justice when the Tribunal is required to hear and determine an appeal;

(b) the other 2members shall be appointed by the presiding member from the Panel of Tribunal members, who shall be appointed by the Head of State acting on the advice of Cabinet. These persons are to have the following credentials—

(i) qualifications or experience in economics or management finance; or

(ii) qualifications or experience in power engineering or power business management; or

(iii) legal qualifications with a power or **electricity** sector background.

(2) Prior to the commencement of a Tribunal proceeding, each member shall be required to state that he or she has:

(a) no personal interest or involvement in the matter under dispute; and

(b) no association of any nature with any of the disputing parties which may be perceived as affecting the impartiality of the member.

37. Remuneration of Tribunal members – A Tribunal member shall be entitled to receive a sitting fee, allowance and other expenses approved by Cabinet.

38. Revocation of appointment of Tribunal members – The Head of State, acting on the advice of Cabinet, shall have the power to revoke the appointment of any member of the Tribunal where the member:

(a) becomes of unsound mind or otherwise becomes permanently unable to perform his or her functions by way of health; or

(b) is convicted of an offence for which he or she is sentenced to any period of imprisonment; or

(c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him or her under this **Act**; or

(d) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal; or

(e) has an interest in the proceedings which the member has failed to disclose.

39. Ministry to provide necessary administrative support – The Ministry responsible for justice and courts administration shall provide the necessary administrative support to the Tribunal whenever the Tribunal convenes under this Part.

40. Convening Tribunal hearings – (1) The presiding member shall convene a meeting of the Tribunal as soon as is necessary for the Tribunal to hear and determine any dispute referred to the Tribunal.
(2) Where the Tribunal is to convene, it shall do so at such time and place, and conduct its proceedings, as determined by the Presiding Member.

41. Tribunal proceedings – **(1)** The Tribunal shall have such powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry **Act** 1964.
(2) A person who, after being summoned or ordered to attend before a Tribunal or to produce any books, papers, writings, or documents to a Tribunal:

(a) fails to appear according to the requirements of such a summons; or

(b) refuses to be sworn or to give evidence or to make answer to such questions as may be put to the person by any member of a Tribunal relating to the subject of the inquiry; or

(c) fails to produce any such books, papers, writings, or documents, commits an offence, and upon conviction is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 6 months, or both.

42. Principles of natural justice to be observed – **(1)** A Tribunal proceeding shall be conducted in accordance with the principles of natural justice.
(2) Despite anything in this **Act**, any matter that is referred to the Tribunal shall be dealt with as expeditiously as possible, and the Tribunal shall have powers to do anything or

issue orders to be complied with to permit the timely determination of a dispute.
(3) During a Tribunal hearing, the following matters shall be observed:

(a)sworn statements are to be submitted by persons intending to provide evidence or make submissions to a Tribunal; and

(b)the right to cross examine any witness shall be restricted only to matters which the Tribunal considers to be of such a probative nature that they need to be tested under cross examination; and

(c)each party, and any interested person permitted to participate in a Tribunal proceeding, may prepare and submit written submissions, which are to be provided to other parties and their representatives on terms determined by the Tribunal.

43. Government may be represented in any proceeding – **(1)** In any proceeding under this Part, the Attorney General may elect whether he or she wishes to represent the Government.
(2) Where the Attorney General chooses to represent the Government, the Government shall be regarded as a party to the dispute.
(3) Despite anything in this **Act**, no orders may be made for the payment of any costs associated with any Tribunal proceedings against the Government.

44. Tribunal decisions – **(1)** A decision of the Tribunal shall be validly made on a majority vote.
(2) The Tribunal shall give due deference to the expertise of the Regulator.
(3) Subject to subsection (4), the Tribunal may conduct a detailed economic or technical review of a decision by the Regulator if in its opinion, finds that the decision being appealed is technically or economically erroneous.
(4) Where the Tribunal conducts an economic or technical review of a decision by the Regulator, it must first consider the initial submission from the appellant, the Government and any other interested parties.
(5) Where the Tribunal finds that the Regulator made an erroneous decision, it may:

(a) confirm, modify or reverse the decision or order of the Regulator; or

(b) refer the decision or order back to the Regulator for re-consideration, either generally or in relation to any matter specified by the Tribunal; or

(c) order that the decision of the Regulator to which an appeal relates shall not have effect until the appeal is determined; or

(d) dismiss the appeal; or

(e) subject to subsection (6), order costs to be paid against any person.
(6) Despite subsection(5)(e), costs may not be awarded against any Government Ministry or statutory body, other than an **electricity** network services licensee.

45. Decision of Tribunal to be final – A decision of the Tribunal is final and binding on all parties, and all persons named in any order made by a Tribunal.

46. Government Ministries and agencies to assist Tribunal – **(1)** All government Ministries and agencies shall cooperate with the Tribunal and make available, at no cost to the Tribunal, any document or record in its custody which the Tribunal requires, or which may assist in the consideration and determination of a dispute.
(2) A dispute arising between the Tribunal and a government Ministry or agency over the disclosure of information required under subsection (1) shall be referred to the Attorney General for determination on the matter.
47. Appeal to bar litigation – **(1)** Subject to subsection (2), no person may commence any proceedings in Court regarding a decision of the Regulator unless the person has first lodged an appeal with the Tribunal.
(2) Despite subsection (1), a person is entitled to commence proceedings in a Court of law for matters relating to the judicial review of the procedures undertaken by the Tribunal.

48. Enforcement of orders – A person who fails or refuses to obey an order of the Tribunal, commits an offence and upon conviction is liable to the following penalties:

(a) in the case of a natural person, to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 12 months, or both; or

(b) in the case of a company or other incorporated body, to a fine not exceeding 1,000 penalty units for a first offence and 2,000 penalty units for a subsequent offence.

PART XI
MISCELLANEOUS

49. Advice to Minister – The Regulator shall provide advice to the Minister and the Government on matters of **electricity** sector policy from time to time, and upon any specific request from the Minister to do so.

50. Rules and procedures – **(1)** Subject to subsection (2), the Regulator shall determine rules and procedures for the processing of tariffs and licence applications as well as dispute resolution proceedings as the Regulator deems fit.
(2) Despite subsection (1), where in making any decision required under this **Act** and in any proceedings undertaken under this **Act**, the Regulator must provide his or her decision in a formal decision stating the basis of his or her decision.

51. Annual reports – (1) The Regulator shall, within 6 months after 30 June in each year, provide annual reports to Cabinet and Parliament through the Minister which shall set out all the activities of the Office of the Regulator and the status of Office of the Regulator and its progress in achieving the objectives of this **Act** .
(2) The annual report shall provide an account for funds received and disbursed and shall contain estimates of funding needs and activities for the following year.
(3) The annual financial reports of the Office of the Regulator shall be subject to an independent audit.

52. Offences and penalties – A person who contravenes a provision of this **Act** for which a penalty has not been provided for, commits an offence and upon conviction, is liable to a fine not exceeding 5,000 penalty units or a term of imprisonment not exceeding 5 years, or both.

53. Reporting of offences to the Attorney General – (1) The Regulator shall report all breaches of this **Act** to the Attorney General and shall advise the Attorney General as to any necessary prosecutions which the Regulator believes ought to be pursued against any person.
(2) Upon the receipt of advice for prosecution under subsection (1), the Attorney General may, subject to resource constraints, consider the laying of charges against such person.

54. Regulations – (1) The Head of State, acting on the advice of Cabinet, may make such Regulations as are necessary or expedient for the implementation of this **Act**.
(2) Without limiting subsection (1), regulations made under this **Act** may make provision for:

(a) prescribing the principles, methodologies and processes for setting tariffs for the Regulator to implement;

(b) the issuing, monitoring and enforcing of licences granted under the provisions of this **Act**, in particular, to provide for the following matters relating to the issuing of a licence under this **Act**—

(i) the term of the licence;

(ii) the services governed by the licence;

(iii) the conditions, including service standards, of the licence;

(iv) licence fees;

(v) compensation of licensee;

(vi) monitoring and enforcement of the terms and conditions of the licence;

(vii) avenues for dispute resolution;

(c) specifying procedures, forms or fees relating to tariff setting, licensing, public consultation and least cost new power supply measures; and

(d) prescribing service standards for **electricity** service providers required under this **Act**.

(3) Regulations made under this **Act** may prescribe offences and may impose penalties in respect of the commission of an offence, being fines not exceeding 100 penalty units or imprisonment for terms not exceeding 6 months, or both.

55. Claim for failure of electricity supply – (1) A consumer of **electricity** supplied or sold to that consumer by an **electricity** network services licensee may not bring a claim against an **electricity** network services licensee where there is an increase, diminution or discontinuance of the supply of **electricity**:

(a) caused by accident, drought or other natural phenomenon or other unavoidable cause; or

(b) caused by an **electricity** network services licensee in the proper performance of its functions.

(2) In any filings referred to the Regulator or any proceedings taken to Court against an **electricity** network services licensee by a consumer for a claim of damages, the burden of proof shall be on an **electricity** network services licensee to establish the defence provided to it under subsection (1).

56.Transitional provisions – Despite anything in this **Act**:

(a) the Electric Power Corporation shall be issued the following licences under this **Act** upon the commencement of this **Act**—

(i) a licence to cover its existing generation activities for 10 years from the commencement of this **Act**; and

(ii) a licence to cover its existing **electricity** network services activities for 10 years from the commencement of this **Act**;

(b) all existing tariffs and any additional charge that is charged to compensate the Electric Power Corporation for the cost of fuel used for the supply of **electricity** that are in force at the commencement of this **Act** are deemed to be approved by the Regulator under this **Act**.

57. Consequential amendments – The following enactments are to be amended:

(a) the **Electric Power Corporation Act 1980** is amended as follows—

(i) section 3 is amended by inserting a new definition immediately after the definition of the term “Minister” as follows:

““Regulator” means the **Electricity** Regulator appointed under the **Electricity Act 2010**.”;

(ii) section 15 is amended by deleting the words “The functions of the Corporation are” where they appear in this section and substituting them with the following words:

“Subject to the **Electricity Act 2010**, the functions of the Corporation are:”;

(iii) section 15A is deleted and substituted with the following:

“**15A.Protection of lines-**(1) Where any tree growing on any land causes or is likely to cause damage to an electric line, the General Manager may give written notice to the owner or occupier of that land to remove the tree or any part of the tree.

(2) A person given a notice under subsection (1) must comply with the notice.

(3) Despite subsection (2), any person who receives a notice under subsection (1) and is dissatisfied with the notice may appeal in writing to the Regulator.

(4) Where the Regulator receives an appeal under subsection (3), the Regulator shall make a determination on the matter within 14 days of receiving the appeal.

(5) In making a determination under this section, the Regulator must consider all the circumstances of the matter, and particularly the degree of damage that the tree is causing to the power lines and the effect, if any, the removal of the tree will have on the person claiming to own the tree.

(6) Once an appeal is lodged with the Regulator under this section, the General Manager and staff of the Corporation shall not enter the affected land to remove any tree or part of a tree until the Regulator determines the appeal.

(7) A person who wilfully fails to comply with a notice under this section or who interferes with or attempts to interfere with a person attempting to comply with such notice commits an offence and upon conviction is liable to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 3 months, or both.

(8) Despite anything in this section, in cases of imminent danger to life or health or the integrity of the power system, the General Manager shall not be required to provide a notice under this section.”;

(iv) section 16 is amended by deleting subsection (1) and substituting it with the following:

"(1) Subject to any direction, approval or authorisation by the Regulator under the **Electricity Act 2010**, the Corporation has power to do all things necessary or convenient to be done in connection with, or as incidental to, the performance of the functions under this **Act**.";

(v) a new section 17A is to be inserted immediately after section 17 as follows:

"17A. Corporation to provide adequate supply of **electricity** - Subject to any financial or other resource constraints, the Corporation shall ensure that an adequate supply of **electricity** is made available for all of the people of Samoa;

(vi) section 21 is amended by:

(A) deleting the word "The" where it first appears in subsection (1) and substituting the following:

"Subject to subsection (3), the"; and

(B) inserting a new subsection immediately after subsection (2) as follows:

"(3) Despite anything in this section, the Corporation shall be required to maintain its accounts in accordance with such directions, instructions or requirements as may be issued by the Regulator from time to time.";

(vii) section 23A is repealed;

(viii) section 24 is amended by deleting the phrase "or generate or distribute **electricity** ";

(ix) section 25(3) is amended by deleting the phrase "or generating or distributing **electricity** .";

(x) section 48 is repealed;

(xi) section 51 is amended by deleting paragraphs (f), (h), (i) and (j).

(b) section 2 of the **Fair Trading Act 1998** is amended by deleting the word "**electricity** " where it appears in the definitions of the terms "goods" and "services";

(c) section 15 of the **Value Added Goods and Services Tax Act 1992/1993** is amended by deleting the phrase "under the **Electric Power Corporation Act** **1980** " where it appears in paragraph (e).

REVISION NOTES 2011 – 2012

This **Act** has been revised under section 5 of the ***Revision and Publication of Laws Act 2008***.

The following general revisions have been made:

(a) Insertion of the commencement date

(b) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

(i) Numbers in words changed to figures
(ii) "shall not apply" changed to "does not apply"
(iii) "shall be liable" changed to "is liable"
(iv) "and/or" changed to "or"
(v) "Every"/"Any" changed to "A"/"An"

No amendments were made to this **Act** since its enactment.

This **Act** has been revised in 2011 and 2012 by the Attorney General under the authority of the ***Revision and Publication of Laws Act 2008*** and is the official version of this **Act** as at 31 December 2012. It is an offence to publish this **Act** without approval or to make any unauthorised change to an electronic version of this **Act**.

Aumua Ming Leung Wai
Attorney General of Samoa

Revised in 2011 by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

Revised in 2012 by the Legislative Drafting Division.

The Electricity Act 2010 is administered by the Ministry of Finance.