

South Africa

Disaster Management Act, 2002

Regulations Regarding the Impact of Severe Electricity Supply Constraint, 2023

Government Notice R3095 of 2023

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Regulations Regarding the Impact of Severe Electricity Supply Constraint, 2023

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Government Notice R3095 of 2023

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1. Definitions

In these Regulations, unless the context otherwise indicates—

"**Constitution**" means the [Constitution of the Republic of South Africa, 1996](#);

"**essential infrastructure**" means any installation, structure, facility or system, whether publicly or privately owned, the loss or damage of, or the tampering with, which may interfere with the provision or distribution of a basic service to the public; as defined in the Criminal Matters Amendment Act, 2015 ([Act No. 18 of 2015](#)) and specified in a list attached to these regulations;

"**directions**" means the directions contemplated in section 27(2) of the Act, issued by a Cabinet member relating to his or her line functions, after consultation with the Cabinet member responsible for cooperative governance and traditional affairs and any other relevant cabinet member;

"**Energy Action Plan**" means a plan compiled by the national government to address the electricity shortfall and reduce the severity and frequency of load shedding through a range of interventions;

"**electricity**" means a secondary energy source derived from the conversion of primary sources;

"**Eskom**" means Eskom Holdings Limited, established in terms of the Eskom Conversion Act, 2001 ([Act No. 13 of 2001](#));

"**Generation Recovery Plan**" means a plan compiled by Eskom which is directed at improving performance at a number of priority power stations while sustaining performance of the rest of Eskom's generation fleet and addressing key focus areas to improve generation performance;

"**institution**" means any public or private institution, including a sole practitioner and any other business owned and operated by a single person;

"**load shedding**" means the process of deliberately disconnecting preselected loads from a power system in response to an abnormal condition in order to maintain the integrity of the remainder of the system;

"**National Environmental Management Act**" means the National Environmental Management Act, 1998 (Act No. of 107 of 1998);

"**national state of disaster**" means the national state of disaster declared by Government Notice No. R. 3020 of 9 February 2023;

"**Net billing**" is defined as a mechanism in which the customer receives a credit on the electricity bill for energy produced that is not consumed immediately

"Original Equipment Manufacturers" means the original manufacturer of non-aftermarket systems or components that are used by Eskom;

"specific environmental management Act" has the meaning assigned to it in terms of the National Environmental Management Act;

"system operation" means the operation of the national transmission power system in real time, including dispatching, scheduling of transmission and ancillary services, generation outage coordination, transmission congestion management and coordination, and such other activities as may be required for the reliable and efficient operation of the national transmission power system;

"System Operator" means the person who is responsible for the system operation;

"the Act" means the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)); and

"wheeling" means conveyancing of electricity from the point of generation connection to a point of consumption through a third-party transmission or distribution network.

2. Objects

The objects of these Regulations are to assist, protect and provide relief to the public; to protect property; to prevent and combat disruption; and to deal with the destructive nature and other effects of the disaster by—

- (a) minimising the impact of load shedding on livelihoods, the economy, policing functions, national security, security services, education services, health services, water services, food security, communications and municipal services, amongst others;
- (b) reducing and managing the impact of load shedding on service delivery to support lifesaving and specified essential infrastructure;
- (c) providing measures to enable the connection of new generation of electricity; and
- (d) providing measures to improve Eskom's plant performance.

3. Cooperation between spheres of government

The national executive must act in close cooperation with other spheres of government, and provincial and municipal organs of state to deal with the national state of disaster.

4. General measures to address effects of disaster and prevent escalation of severe electricity supply constraint

All institutions within national, provincial and local spheres of government must, for the duration of the declared national state of disaster, within their available resources—

- (a) adopt energy saving measures to contain the effects of the disaster and prevent the escalation of the electricity supply shortfall;
- (b) ensure continuous operation of health facilities, water infrastructure and other specified essential infrastructure and services, including by installing alternative energy sources or other measures to provide an uninterrupted power supply;
- (c) release and mobilise available resources, including human resources, stores, equipment, ships, aircraft platforms, vehicles and facilities;
- (d) release their personnel for the rendering of emergency services, as contemplated in section 27(2)(b) of the Act; and
- (e) provide funds for this purpose, subject to affordability.

5. Authority to issue directions

- (1) The relevant Cabinet member may issue directions, as required, within his or her mandate, in consultation with the Cabinet member responsible for cooperative governance and traditional affairs and any other relevant Cabinet member, for the purposes of giving effect to the objects set out above and the following—
 - (a) disseminating information required for dealing with the national state of disaster;
 - (b) granting of exemptions from load-shedding or reduced load shedding schedules to specified essential infrastructure and services where technically feasible, in alignment with the requirements and obligations of the System Operator and only to the extent that such exemptions or reductions would not result in an increased risk of higher stages of load shedding;
 - (c) maintaining security and availability of the supply of goods and services during the national state of disaster;
 - (d) implementing measures to remove impediments to the development or construction of new generation capacity;
 - (e) streamlining and expediting application and decision-making procedures for regulatory processes related to energy generation projects, including designating a single department or institution to receive and coordinate the processing of applications or stipulating maximum timeframes for decision-making;
 - (f) providing exemptions or expedited approvals under the Subdivision of Agricultural Land Act, 1970 ([Act No. 70 of 1970](#)) and Spatial Planning and Land Use Management Act, 2013 ([Act No. 16 of 2013](#)) to authorise land use for energy generation;
 - (g) requiring mobile network operators and broadcasters to issue public service announcements on the national state of disaster, at no cost to users;
 - (h) streamlining the application and decision-making processes for environmental authorisations, waste management licences, atmospheric emission licences, condonations and exemptions associated with energy infrastructure and generation, transmission and distribution facilities, for the duration of the national state of disaster;
 - (i) excluding upgrades, refurbishments, adjustments and repairs of existing energy infrastructure and existing generation, transmission and distribution facilities, from the provisions of the National Environmental Management Act, or any specific environmental management Act, or any regulations published in terms thereof, for the duration of the national state of disaster;
 - (j) facilitating the sale of electricity generated by individuals, organs of state or private institutions to license distributors as defined in the Electricity Regulation Act 2006 ([Act No. 4 of 2006](#));
 - (k) issuing of rules or guidelines for licensed distributors to implement net billing and other mechanisms to facilitate small-scale embedded generation as well as wheeling of electricity;
 - (l) facilitating the importation of electricity by Eskom from neighbouring countries and the conclusion of contracts relating to electricity imports, on an expedited and negotiated basis in accordance with the emergency procurement procedures outlined in regulation 6;
 - (m) providing for the recruitment or placement of skilled personnel or appointment of Original Equipment Manufacturers by Eskom as required to deliver the Generation Recovery Plan on an expedited basis;

- (n) facilitating access to servitudes on public and private land for Eskom and Eskom group companies for the purposes of expanding the national transmission network, in terms of the Expropriation Act, 1975 ([Act No. 63 of 1975](#));
 - (p) requiring water boards and municipalities to revise the minimum operational levels for reservoirs; increase water treatment and reservoir storage capacity; revise watertreatment schedules to maximize water treatment while electricity is available or other measures; or take other measures to ensure security of water supply;
[Please note: numbering as in original.]
 - (q) exempting water boards or municipalities that are water service authorities from penalties for exceeding the notified maximum demand during periods of load shedding;
 - (r) enabling effective co-ordination between state departments, Eskom and other relevant entities and institutions to ensure security of electricity infrastructure;
 - (s) taking any other steps that may be necessary to prevent an escalation of the national state of disaster, or to alleviate, contain and minimise the effects of the national state of disaster; or
 - (t) taking steps to facilitate international assistance aimed at alleviating, containing or minimising the national state of disaster.
- (2) All directions issued in terms of these Regulations shall continue to apply for the duration of the national state of disaster unless, varied, amended or withdrawn by the Cabinet member responsible for such directions.
 - (3) An activity which is permitted by an authorisation or exemption granted in terms of regulations or directions issued during the national state of disaster remains lawful notwithstanding the termination of the national state of disaster.

6. Emergency procurement procedures

- (1) Emergency procurement for public institutions is subject to—
 - (a) the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), and the applicable emergency provisions in the Regulations or Instructions made under section 76 of that Act;
 - (b) the Municipal Finance Management Act, 2003 ([Act No. 56 of 2003](#)), and the applicable emergency provisions in the Regulations made under that Act;
 - (c) the Preferential Procurement Policy Framework Act, 2000 ([Act No. 5 of 2000](#)).
- (2) The Auditor-General shall conduct real time audits and report on the accounts, financial statements and financial management of all emergency procurement undertaken during the national state of disaster.
- (3) Accounting officers must take steps to ensure that anti-corruption measures are implemented during emergency procurement.
- (4) Any procurement undertaken using the emergency provisions referred to in (a) and (b) during the national state of disaster must be published and reported to Parliament within the month of the expenditure by accounting officers and authorities, including the details of such procurement and the reasons for deviating from normal procurement procedures.

7. Commencement

These Regulations come into operation on the date of publication in the *Gazette*.

Annex

List of essential infrastructure

- 1) Health Infrastructure, including military health facilities
- 2) Water infrastructure including water treatment plants
- 3) Rail and ports infrastructure
- 4) Food production and food storage facilities where feasible
- 5) Critical electronic communications and broadcasting infrastructure