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Contents

<i>No.</i>	<i>Gazette No.</i> <i>Page No.</i>
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS	
Mineral Resources and Energy, Department of / Mineraalbronne en Energie, Departement van	
1746 Electricity Regulation Act (4/2006): 2nd Amendment Bill for Public Comments	45898 3

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES AND ENERGY

NO. 1746

10 February 2022

PUBLICATION FOR COMMENTS

ELECTRICITY REGULATION ACT, 2006 (ACT No. 4 OF 2006)

I, Gwede Samson Mantashe, the Minister of Mineral Resources and Energy, having obtained Cabinet approval, hereby publish the 2nd Amendment Bill of the Electricity Regulation Act, 2006 (ACT No. 4 OF 2006) for public comments. Interested and affected parties are hereby invited to submit written representations on the draft Amendment Bill. The aforesaid representations must be marked for the attention of Mr Matthews Bantsijang, and hand delivered, emailed or sent by post, within 30 days of publication of this notice to the following addresses; 70 Mentjies street Private Bag x59, Sunnyside or Arcadia 0001. Email address: era@dmre.gov.za.


GWEDE MANTASHE, MP

Minister of Mineral Resources & Energy

10/02/2022

REPUBLIC OF SOUTH AFRICA

ELECTRICITY REGULATION AMENDMENT BILL

(As introduced in the National Assembly as section 76 Bill, explanatory summary of Bill published Gazette No. of 2021) (The English text of the Bill is the official text of the Bill)

(MINISTER OF MINERAL RESOURCES AND ENERGY)

[B — 2021]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To establish a national regulatory framework for the electricity supply industry; to make the National Energy Regulator of South Africa the custodian and enforcer of the national electricity regulatory framework; to provide for licences and registration as the manner in which generation, transmission, distribution, system operation, reticulation, trading and the import and export of electricity are regulated; to provide for the establishment of the Transmission System Operator, to provide a competitive multi market structure for the electricity industry, to regulate the reticulation of electricity by municipalities; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 4 of 2006, as amended by section 1 of Act 28 of 2007

1. Section 1 of the Electricity Regulation Act, 2006 (hereinafter referred to as "the principal Act"), is hereby amended—

(a) by the insertion of the following definitions:

“ancillary services” means those services necessary to support the continuous and secure operation of electric power system and necessary to maintain reliable operations of the interconnected power system, including, but not limited to, those services necessary for voltage and reactive power control, automatic generation 40 control, frequency control and black start capabilities;

“Central Purchasing Agency” means an entity within the TSO assigned to fulfil the role of the Single Buyer while allowing for a transition for a competitive market, a buyer of legacy power purchase contracts, and may purchase additional capacity and energy as required to maintain system integrity in a competitive environment.

“Commission” means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;

“Companies Act” means the Companies Act, 2008 (Act No. 71 of 2008)

- (a) by the deletion of the definition of "chief executive officer":
- (b) by the insertion before the definition of "customer" of the following definitions:

" 'code' means a code of conduct and practice contemplated in section 35(2):

'Constitution' means the Constitution of the Republic of South Africa, 1996;"

"Day-ahead market" means energy market matches the supply of electrical energy with the expected demand in each hour of the trading day;

- (c) by the insertion after the definition of "customer" of the following definitions:

"Department" means the department responsible for mineral resources and energy;

"Director-General" means the Director-General of the Department;

" 'direct supply agreement' means an agreement for the sale of electricity between a generation licensee, acting in its capacity as such, and a customer, whether such electricity is supplied directly or through a transmission power system or a distribution power system, provided that the customer is not a generator, transmitter, distributor, system operator or trader;

'dispatching' means the scheduling, coordination and management of the flow of electricity produced by generation facilities into and out of a transmission power system or an interconnected distribution power system, including scheduling, coordinating and managing the start-up and

shut-down of those facilities, and 'dispatch' has a corresponding meaning;"

- (d) by the substitution for the definition of "distribution power system" of the following definition:

" **'distribution power system'** means a **[power system that]** network for the conveyance of electricity which operates at or below a nominal voltage of 132kV;"

- (e) by the insertion after the definition of "distribution power system" of the following definition:

" **'distribution licensee'** means a holder of a licence to construct or operate a distribution power system in terms of section 4(a)(i)(cc);"

- (f) by the insertion after the definition of "distributor" of the following definition:

" **'electricity infrastructure procurement process'** means a procurement process for the acquisition of electricity infrastructure pursuant to a section 34 determination;"

- (g) by the substitution for the definition of "end user" of the following definition:

" **'end user'** means a user of electricity **[or a service relating to the supply of]** who consumes such electricity;"

- (h) by the insertion after the definition of "end user" of the following definition:

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

- (i) by the insertion after the definition of "generation" of the following definition:

" 'generation licensee' means a holder of a licence to construct or operate a generation facility in terms of section 4(a)(i)(aa);"

- (j) by the insertion after the definition of "generator" of the following definitions:

" 'guideline' means a guideline contemplated in section 35(2);"

"independent power producer" means any person in which an organ of state does not hold a direct or indirect controlling interest, which undertakes or intends to undertake the development of new generation capacity or the generation of electricity pursuant to a section 34 determination;"

- (k) by the substitution for the definition of "integrated resource plan" of the following definition:

" 'integrated resource plan' means [a resource] an indicative, forward-looking plan [established by the national sphere of government to give effect to] for electricity generation, compiled in accordance with section 32A to reflect national policy on electricity planning, which plan specifies the types of energy sources and technologies from which electricity may be generated and indicates the amount of electricity that is to be generated from each of such sources or technologies;"

- (l) by the insertion after the definition of "integrated resource plan" of the following definitions:

" 'interconnected distribution power system' means a distribution power system that is interconnected to a transmission power system either directly or through interconnection to a distribution power system"

where the latter system is directly or indirectly interconnected to a transmission power system;

“Independent Power Producer or IPP” means a any person in which government or any organ of state does not hold a controlling ownership interest (whether direct or indirect), which undertakes or intends to undertake development or creation of new generation capacity;

‘IPP procurement process’ means a procurement process for the acquisition of electricity or new generation capacity from independent power producers pursuant to a section 34 determination;"

“licence” means a licence issued under this Act;

“Market participants” means generators, buyers and traders which meet the qualifying criteria set by regulations;

“member” means an executive or non-executive member of the Board;

(m) by the substitution for the definition of "Minister" of the following definition:

" **'Minister'** means the Minister of **[Minerals]** Mineral Resources and Energy;"

Multi-market means a market were a trading platform and single buyer co-exist

(n) by the insertion after the definition of "National Energy Regulator Act" of the following definitions:

“national control centre” means the control centre operated for the control and management of the dispatch and supply of electricity by the generation licensees into the transmission power system;

“national **information system**” means the system provided for in section 4(a)(v)(bb);

‘national transmission power system’ means the interconnected transmission power system used for the transmission of electricity produced by generation facilities for purposes of the supply of electricity to customers across the territory of the Republic;

‘new generation capacity’ means additional electricity capacity, including capacity derived from new generation facilities, an expansion of existing facilities or existing facilities not previously connected to the national transmission power system or an interconnected distribution power system, other than—

- (a) the capacity of generation facilities for own use;
- (b) the capacity of generation facilities that supply electricity to end users pursuant to direct supply agreements;
- (c) the capacity of generation facilities referred to in item 1 of Schedule II; and
- (d) the capacity of generation facilities for export, which have been approved by the Minister in accordance with section 13A(1)(c);

“NERSA” means the National Energy Regulator of South Africa established in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004);

‘organ of state’ bears the meaning assigned to it in section 239 of the Constitution;

'own use', in the context of a generation facility, means a facility that generates electricity that is used by the operator or owner of that facility but which may also export electricity to a distributor pursuant to an agreement entered into with such distributor;"

- (o) by the substitution for the definition of "person" of the following definition:

" **'person'** includes any organ of state **[as defined in section 239 of the Constitution]**;

- (p) by the insertion after the definition of "person" of the following definition:

" **'power purchase agreement' or 'PPA'** means an agreement between a generator and a buyer for the sale and purchase of electricity or electricity generation capacity;"

- (q) by the substitution for the definition of "prescribe" of the following definition:

" **'prescribe'** means prescribe by regulation **[or rule]**;"

- (r) by the deletion of the definition of "price";

- (s) by the insertion after the definition of "prescribe" of the following definition:

" **'regulations'** means regulations prescribed by the Minister in terms of section 35(4);"

- (t) by the substitution for the definition of "Regulator" of the following definition:

" **'Regulator'** means the National Energy Regulator established **[section 3 of]** the National Energy Regulator Act;"

- (u) by the insertion after the definition of "reticulation" of the following definitions:

" 'rule' means a rule made by the Regulator in terms of section 35(3) or 35(3A);

'section 34 determination' means a determination made by the Minister

- (v) by the substitution for the definition of "supply" of the following definition:

" 'supply' means trading, system operation, export and import and the generation, transmission or distribution of electricity;"

- (w) by the insertion after the definition of "supply" of the following definitions:

" '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 system operation;"

- (x) by the substitution for the definition of "tariff" of the following definition:

" 'tariff' means a charge [for electricity] to a customer in respect of a licensed activity, other than a surcharge, tax, levy or duty imposed by a municipality in terms of section 229 of the Constitution;"

- (y) by the insertion after the definition of "tariff" of the following definition:

" 'trader' means a person who trades in electricity;"

- (z) by the substitution for the definition of "trading" of the following definition:

" **'trading'** means the wholesale or retail buying **[or]** and selling of electricity **[as a commercial activity]**, and **"trade"** has a corresponding meaning;"

(zA) by the insertion after the definition of "trading" of the following definition:

" **'trading licensee'** means a holder of a licence to trade in terms of section 4(a)(i)(gg);"

(zB) by the substitution for the definition of "transmission" of the following definition:

" **'transmission'** means the conveyance of electricity through a transmission power system excluding system operation and trading, and 'transmit' and 'transmitting' have corresponding meanings;"

(zC) by the insertion after the definition of "transmission" of the following definition:

" **'transmission development plan'** means the plan for the development of the national transmission power system prepared by the system operator and published by the Minister in terms of section 32B(5)(f);"

(zD) by the substitution for the definition of "transmission power system" of the following definition:

" **'transmission power system'** means a **[power system that]** network for the conveyance of electricity which operates above a nominal voltage of 132kV;"

(zE) by the substitution for the definition of "transmitter" of the following definition:

" **'transmitter'** means a person who **[transmits electricity]** constructs, manages and maintains a transmission power system; [and];"

(zF) by the substitution for the definition of "this Act" of the following definition:

" **'this Act'** includes the Schedules to this Act and any regulation or rule made or issued in terms thereof~~[.]~~; and"; and

(zG) by the insertion after the definition of "this Act" of the following definition:

" **'vertically integrated licensee'** means a person who holds licences listed in more than one of the sub-paragraphs of section 4(a)(i) of this Act but excludes a person who only holds licences in terms of section 4(a)(i) (ee), (ff) and (gg)."

Amendment of section 2 of Act 4 of 2006

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in **[South Africa]** the Republic;"

Substitution of section 3 of Act 4 of 2006

3. The following section is hereby substituted for section 3 of the principal Act—

"Regulator

3. [(1)] The National Energy Regulator established by section 3 of the National Energy Regulator Act is, to the extent provided in this Act, the custodian and enforcer of the regulatory framework provided for in this Act."

Amendment of section 4 of Act 4 of 2006, as amended by section 2 of Act 28 of 2007

4. Section 4 of the principal Act is hereby amended—

(a) by the substitution in paragraph (a) for subparagraph (i) of the following subparagraph:

"(a) must—

(i) consider applications for **[licenses]** licences and may issue licences for—

(aa) the construction and operation of a generation facility;

(bb) the construction and management of a transmission power system;

(cc) system operation;

(dd) the construction and operation of a distribution power system;

(ee) the import of electricity;

(ff) the export of electricity; and

(gg) trading, subject to the provisions of section 7;";

- (b) by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph:

"(ii) **[regulate prices and]** set and approve tariffs as contemplated in sections 14(1) and 14A;";

- (c) by the deletion of subparagraph (a)(iv);

- (d) by the substitution in paragraph (a) for subparagraph (v) of the following subparagraph:

"(v) establish and manage—

(aa) monitoring and information systems relating to matters within the Regulator's jurisdiction; and

(bb) a national information system,
and co-ordinate the integration thereof with other relevant
information systems;"

- (e) by the substitution in paragraph (a) for subparagraph (vii) of the following subparagraph:

"(vii) enforce performance and compliance with this Act and licence conditions imposed by the Regulator in terms of this Act, and take
appropriate steps in the case of non-performance;"

- (f) by the insertion in paragraph (a) after subparagraph (vii) of the following subparagraph:

"(viii) exercise any power or perform any duty conferred or imposed on it under this Act or any other law;" and

(g) by the substitution for paragraph (b) of the following paragraph:

"(b) may—

- (i) mediate and arbitrate disputes between generators, transmitters, distributors, traders, customers or end users;
- (iA) mediate and arbitrate disputes between the system operator and any other licensee or customer;
- (ii) undertake investigations and inquiries into the activities of licensees and other matters contemplated in this Act; and
- (iii) perform any other act incidental to its functions."

Amendment of section 6 of Act 4 of 2006

5. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Regulator **[must]** may require a licensee, other than a generation licensee, to establish and fund a customer or end users forum in the manner set out in the licence held by such a person."

Amendment of section 7 of Act 4 of 2006

6. Section 7 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) No person may, without **[a]** the appropriate licence issued by the Regulator in accordance with this Act or unless authorised in terms of a licence condition contemplated in section 14(1)(f)—

(a) construct or operate any generation facility;

(b) **[import or export any electricity]** construct, or manage any transmission power system;

(c) **[be involved in training]** construct or operate any distribution power system;

(d) import any electricity;

(e) export any electricity; or

(f) engage in system operation.";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) The Minister may, by notice in the *Gazette*, determine that persons carrying on a specified category of trading require a licence.

(1B) Subject to subsection (1C), no person may, without a trading licence issued by the Regulator in accordance with this Act, engage in trading that falls within a category which is the subject of a determination in terms of subsection (1A).

(1C) A person who, at the date that a notice is published in terms of subsection (1A), engages in trading that falls within the affected category may continue to trade until its licence application has been

decided, provided that it applies to the Regulator for a trading licence within six months of the publication of that notice.

(1D) Subject to subsection (1C), the Regulator may, at its own instance or following an investigation of a complaint—

(a) determine whether any person is engaged in an activity requiring a licence in terms of subsection (1) or (1A) without that person holding a licence in respect of that activity; and

(b) direct any person engaged in an activity requiring a licence in terms of subsection (1) or (1A) who is not in possession of the necessary licence, to cease such activity."; and

(c) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) Nothing in this Act precludes a potential licensee from discussing the contemplated construction or operation of generation, transmission and distribution facilities, the import or export of electricity, trading, or any other activity relating thereto, prior to filing a licence application with the Regulator."

Amendment of section 8 of Act 4 of 2006, as amended by section 16(b) of Act 28 of 2007

7. The following section is substituted for section 8 of the principal Act:

"Certain activities not licensed

8. The Minister may, after consultation with the Regulator and stakeholders in the advisory forum referred to in section 5, determine by notice in the *Gazette* that any activity contemplated in section 7(1) need no longer be a licensed activity from the date set out in such notice."

Amendment of section 9 of Act 4 of 2006, as amended by section 3 of Act 28 of 2007

8. Section 9 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, in consultation with the Regulator, determine by notice in the *Gazette* that any person involved in an activity relating to trading, export, import or system operation or the generation, transmission or distribution of electricity that does not require licensing in terms of section 7 read with section 8 must register with the Regulator.";

(b) by the insertion after subsection (1) of the following subsection:

"(1A) Any person who operates a generation facility contemplated in item 2 of Schedule 2 must register that facility with the Regulator in terms of this section."

(c) by the substitution for subsection (2) of the following subsection:

"(2) Any person who has to register with the Regulator must do so in the form and in accordance with the **[prescribed]** procedure prescribed by rule, and an application for registration must be

accompanied by the **[prescribed]** registration fee prescribed by rule:

Provided that any person holding a valid licence at the date of a determination contemplated in section 8 must be issued with a registration certificate without complying with the **[prescribed]** procedure prescribed by rule.";

- (d) by the substitution in subsection (3)(b) for subparagraph (i) of the following subparagraph:

"(i) if the application is not made within the **[prescribed]** period prescribed by rule or is not accompanied by the **[prescribed]** registration fee prescribed by rule; or"; and

- (e) by the deletion of subsection (4)(a).

Amendment of section 10 of Act 4 of 2006, as amended by section 4 of Act 28 of 2007

9. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

"(1) (a) A person who has to hold a licence in terms of section **[7]4** must apply to the Regulator for such a licence in the form and in accordance with the **[prescribed]** procedure prescribed by rule.

(b) Such an application must be accompanied by the **[prescribed]** application fee prescribed by rule";

- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

- "(a) a description of the applicant, including its vertical and horizontal relationships with other persons engaged in the construction or operation of generation facilities, the construction, management or operation of transmission **[and]** or distribution **[facilities]** power systems, the import or export of electricity, trading, system operation or any other prescribed activity relating thereto;"
- (c) by the substitution in subsection (2) for paragraphs (c) and (d) of the following paragraphs respectively:
- "(c) a description of the proposed generation~~[],~~ facility or the transmission or distribution **[facility]** power system to be constructed or operated or the proposed service in relation to electricity to be provided, including maps and diagrams where appropriate;
- (d) a general description of the type of customer to be served and the tariff **[and price]** policies to be applied;"
- (d) by the substitution in subsection (2) for paragraph (f) of the following paragraph:
- "(f) a detailed specification of the services that shall be rendered under the licence; and";
- (e) by the deletion in subsection (2) of paragraph (g);
- (f) by the substitution in subsection (2) for paragraph (h) of the following paragraph:
- "(h) such other particulars as the **[Minister]** Regulator may prescribe."; and
- (g) by the insertion after subsection (2) of the following subsection:

"(3) The applicant may request confidential treatment of commercially sensitive information contained in an application and, subject to the concurrence of the Regulator, such information may be withheld from publicly available copies of the application."

Amendment of section 11 of Act 4 of 2006, as amended by section 5 of Act 28 of 2007

10. Section 11 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) When application is made for a licence the Regulator [may require that] must, in writing, direct the applicant to publish a notice of the application in appropriate newspapers or other appropriate media circulating in the area of the proposed activity in at least two official languages."

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"(b) the [objectives] object of the [applicant] application;"

(c) by the substitution in subsection (2) for paragraph (g) of the following paragraph:

"(g) such other particulars as may be [prescribed] specified in the direction referred to in subsection (1)"; and

(d) by the substitution for subsection (3) of the following subsection:

"(3) The advertisement contemplated in subsection (1) must be published for such period or in such number of issues of a

newspaper as the Regulator may **[be prescribed]** specify in the direction referred to in that subsection.".

Amendment of section 13 of Act 4 of 2006, as amended by section 6 of Act 28 of 2007

11. Section 13 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Regulator must **[decide on]** grant or refuse an application in the **[prescribed]** manner prescribed by rule within 120 days—";

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) after receiving the response of the applicant as contemplated in section 12(a) or after receiving the information contemplated in section 12(b), whichever is the later date.";

(c) by the substitution for subsection (3) of the following subsection:

"(3) The Regulator must issue separate licences for the activities listed in items (aa) to (gg) of section 4(a)(i)[—

(a) **the operation of generation, transmission and distribution facilities;**

(b) **the import and export of electricity; or**

(c) **trading]."; and**

(d) by the deletion for subsection (4).

Insertion of section 13A in Act 4 of 2006

12. The following section is hereby inserted in the principal Act after section 1

Amendment of section 14 of Act 4 of 2006, as amended by section 6 of Act 28 of 2007

13. Section 14 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) the establishment of and compliance with directives to govern relations between a licensee and its customers or end users, including the establishment of customer or end user forums;"

(b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

"(d) the setting **[and]** or approval of **[prices, charges, rates and]** tariffs charged by licensees;"

(c) by the deletion in subsection (1) of paragraph (e);

(d) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

"(f) the **[format of and]** contents of agreements entered into **[by]** licensees and their customers;"

(e) by the deletion in subsection (1) of paragraph (g);

(f) by the substitution in subsection (1) for paragraphs (l) and (m) of the following paragraphs respectively:

- "(l) the right to operate generation facilities, to manage transmission or operate distribution [facilities] power systems, engage in system operation, to import or export electricity, to trade or to perform prescribed activities relating thereto, including exclusive rights to do so, and conditions attached to or limiting such rights;
- (m) the duty or obligation to trade, or to generate, transmit, **[or]** distribute, import or export electricity, or to engage in system operation and conditions attached to such duties or obligations;"
- (g) by the substitution in subsection (1) for paragraph (t) of the following paragraph:
- "(t) **[compliance with any regulation, rule or code made under this Act]** allowing the licensee to sub-contract the performance of the licensed functions, including allowing for the licensee to sub-contract the construction, maintenance and operation of the generation facility, transmission power system or distribution power system;" and
- (h) by the substitution in subsection (1) for paragraphs (y) and (z) of the following paragraphs respectively:
- "(y) the period within which licensed facilities must become operational and, in the case of a generation facility for own use or a generation facility intended to supply electricity to customers pursuant to direct supply agreements, the penalties that shall apply or may be imposed by the Regulator in the event that the facility does not become operational within the requisite period; and

- (z) any other ancillary or incidental condition **[prescribed]** specified by the Regulator.".

Insertion of section 14A in Act 4 of 2006

14. The following section is hereby inserted in the principal Act after section 14:

"Pre-approval of tariffs and licence conditions

14A. (1) The Minister may, either prior to or after the relevant section 34 determination and in order to facilitate the procurement of electricity or new generation capacity through an IPP procurement process, in writing request the Regulator, prior to the commencement of such process and within a reasonable time period specified by the Minister in the request, to—

- (a) determine licence conditions that shall apply to the successful participant or participants in that IPP procurement process; and
- (b) determine a tariff, a maximum tariff or a guideline tariff for a particular generation technology, that shall apply in respect of electricity generated by means of that technology pursuant to that IPP procurement process.

(2) The determination referred to in subsection (1)(b) may include conditions to which the tariff, maximum tariff or guideline tariff is subject.

(3) Subject to conditions determined in accordance with subsection (2), if the Regulator has, in terms of subsection (1)(b), determined:

- (a) a tariff, the Regulator shall impose that tariff as a condition of any generation licence granted in respect of the relevant technology pursuant to the relevant IPP procurement process;
- (b) a maximum tariff, the Regulator shall, in granting a generation licence in respect of the relevant technology pursuant to the relevant IPP procurement process, approve any tariff agreed between the independent power producer and the buyer that does not exceed that maximum tariff; and
- (c) a guideline tariff, the Regulator shall have regard to the guideline tariff in setting or approving the tariffs in a generation licence granted in respect of the relevant technology pursuant to the relevant IPP procurement process.
- (4) The provisions of subsections (1), (2) and (3) apply, with the necessary changes, to the procurement of electricity infrastructure through an electricity infrastructure procurement process."

Amendment of section 15 of Act 4 of 2006, as amended by section 7 of Act 28 of 2007

15. Section 15 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

"Tariff principles

15. (1) [A licence condition determined under section 14 relating to the setting or approval of prices, charges and tariffs and the regulation of Revenues].

(a) The Regulator, in setting and approving tariffs as contemplated in sections 14 or 14A—

(a) must enable an efficient licensee to recover the full cost of **[its] the** licensed **[activities] activity[, including a reasonable margin or return];**

(b) must allow for a reasonable return commensurate with the risk of the licensed activity;

(c) **[must] may** provide for or prescribe incentives for continued improvement of the technical and economic efficiency with which services are to be provided;

(d) must avoid undue discrimination between customer categories[; **and]**

(e) may permit the cross-subsidy of tariffs to certain classes of customers[.] ; and";

(f) may have regard to the need to ensure security of supply and diversity of supply and to promote renewable energy.";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) Tariff determinations must take into account all planned projects reflected in the integrated resource plan and the

transmission development plan insofar as these projects will impact on the costs of the licensee for the period during which the tariff will apply.

(1B) In the case of vertically integrated licensees, the Regulator must set or approve separate tariffs for each of the licensed activities listed in the sub-paragraphs of section 4(a)(i).";

(c) by the substitution for subsection (2) of the following subsection:

"(2) A licensee may not charge a customer any **[other]** tariff **[and make use of provisions in agreements]** other than **[that determined or approved by the Regulator as part of its licensing conditions]** the tariff set or approved by the Regulator as, or in accordance with, a licence condition."; and

(d) by the insertion after subsection (3) of the following subsection:

"(4) Notwithstanding subsection (2), a generation licensee may charge a customer a tariff which has not been set or approved by the Regulator where such tariff is charged pursuant to a direct supply agreement."

Amendment of section 16 of Act 4 of 2006, as amended by section 8 of Act 28 of 2007

16. Section 16 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The **[Minister]** Regulator must prescribe the procedure to be followed in varying, suspending, removing or adding any licence condition."

Amendment of section 17 of Act 4 of 2006

17. Section 17 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections respectively:

"(2) A licensee must, in the circumstances contemplated in subsection (1)(a) and (b), give the Regulator at least 12 months' notice in writing of **[his or her]** its intention to cease activities, unless the Regulator determines otherwise.

(3) The **[Minister]** Regulator must prescribe the form and procedure to be followed in revoking a licence."

Amendment of section 18 of Act 4 of 2006

18. The following section is hereby substituted for section 18 of the principal Act:

"Contraventions of licence

18. (1) If it is alleged that a licensee has contravened or failed to comply with a licence condition or any provision of this Act, the Regulator may **[sit as a tribunal to]** consider and decide on the allegation.

(2) If the **[tribunal]** Regulator finds that the allegation contemplated in subsection (1) is correct it may serve a notice on the licensee directing the licensee to comply with the licence condition or the provision of this Act, as the case may be, within a reasonable period specified in the notice.

(3) If **[it is alleged that]** the licensee **[has failed]** fails to comply with a notice issued in terms of subsection (2), the Regulator may **[sit as a tribunal to decide on that allegation]** impose a penalty not exceeding 10 per cent of the annual turnover of the licensee or R2 000 000,00 (whichever is the higher amount) per day commencing on the day of receipt of the notice contemplated in subsection (2).

[(4) If the tribunal finds that the allegation contemplated in subsection (3) is correct it may impose a penalty of 10 per cent of the annual turnover of the licensee or R2 000 000,00 (whichever is the higher amount) per day commencing on the day of receipt of the notice contemplated in subsection (2).]

(5) The Regulator must consider the extent of the noncompliance in deciding the amount of any penalty.

(6) The Minister may from time to time by notice in the *Gazette* amend the amount referred to in subsection **[(4)](3)** in order to counter the effect of inflation."

Amendment of section 19 of Act 4 of 2006, as amended by section 9 of Act 28 of 2007

19. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Regulator may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if there is any ground justifying such suspension or revocation, such as a failure to carry out the activities for which the licence was granted or material non-compliance with the conditions of the licence.".

Amendment of section 20 of Act 4 of 2006, as amended by section 16(b) of Act 28 of 2007

20. Section 20 of the principal Act is hereby amended by the substitution for subsections (1), (2), (3), (4) and (5) of the following subsections respectively:

"(1) Any generation, **[or]** transmission or system operation licence issued in terms of this Act is valid for a period of 15 years or such **[longer]** period as the Regulator may determine.

(2) Any distribution, **[or]** trading, import or export licence issued in terms of this Act is valid for the period determined by the Regulator.

(3) A licensee may apply for the renewal of **[his or her]** its licence.

(4) **[An application for renewal must be granted, but the]**
The Regulator may set different licence conditions upon renewal of a licence.

(5) A licensee may not assign, cede or transfer a licence to another party without the written consent of the Regulator.".

Amendment of section 21 of Act 4 of 2006, as amended by section 16(b) of Act 28 of 2007

21. Section 21 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) **[A]** Subject to a licence condition imposed in terms of section 14(1)(t), a licence issued in terms of this Act empowers and obliges a licensee to exercise the powers and perform the duties set out in such licence and this Act, and no licensee may cede, transfer or assign any such power or duty to any other person without the prior written consent of the Regulator.";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) A generation licensee shall be entitled to sell the electricity produced by the generation facility to which its licence relates without holding a trading licence.

(1B) The operator of a generation facility contemplated in item 2 of Schedule 2, other than a facility for own use, shall be entitled to

sell the electricity produced by such facility without holding a trading licence."

- (c) by the substitution for subsections (2) and (3) of the following subsections:

"(2) A licensee may not discriminate between customers or classes of customers regarding access, tariffs, prices and conditions of service, except for objectively justifiable and identifiable differences **[approved by the Regulator]**."

(3) A transmission or distribution licensee must, to the extent provided for in the licence, provide non-discriminatory access to **[the] its** transmission **[and]** or distribution power **[systems] system** to third parties."

- (d) by the insertion after subsection (3) of the following subsection:

"(3A) The system operator shall not discriminate between different generators or customers in relation to dispatching, except for objectively justifiable and identifiable reasons."

- (e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

"Access in terms of subsection (3) must be provided on the conditions set out in the licence of such transmitter or distributor, **[that] which** may relate to—";

- (f) by the substitution in subsection (4) for paragraph (c) of the following paragraph:

"(c) the strengthening or upgrading of the transmission or distribution power system in order to provide for access, including contributions

towards such strengthening or upgrading by the potential users of such systems, if applicable;"

- (g) by the substitution in subsection (4) for paragraphs (e) and (f) of the following paragraphs respectively:

"(e) compliance with any rule[,] or code **[or practice made by the Regulator]**; or;

(f) the **[fees]** tariffs that may be charged by a licensee for the use of such power system.";

- (h) by the insertion after subsection (4) of the following paragraph:

"(4A) The transmitter in respect of the national transmission power system shall implement the transmission development plan."; and

- (i) by the insertion after subsection (4A) of the following subsection:

"(4B) If the transmitter in respect of the national transmission power system fails to implement the transmission development plan in any respect, the Minister may, in writing and after consultation with the Regulator and the system operator, instruct the transmitter to implement the plan or specific aspects of the plan."

Amendment of section 22 of Act 4 of 2006, as amended by section 16(b) of Act 28 of 2007

22. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person authorised in writing thereto by a licensee, other than a generation licensee, may at all reasonable times enter any premises to which electricity is or has been supplied by such licensee, in order to inspect the lines, meters, fittings, works and apparatus belonging to such licensee, or for the purpose of ascertaining the quantity of electricity consumed, or where a supply is no longer required, or where such licensee may cut off the supply, for the purpose of removing any lines, meters, fittings, works and apparatus belonging to such licensee."

Amendment of section 23 of Act 4 of 2006, as amended by section 16(b) of Act 28 of 2007

23. Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any asset forming part of a generation facility or a transmission or distribution power system and belonging to a licensee that is lawfully constructed, erected, used, placed, installed or affixed to any land or premises not belonging to that licensee, remains the property of that licensee notwithstanding the fact that such an asset may be of a fixed or permanent nature."

Amendment of section 24 of Act 4 of 2006, as amended by section 16(b) of Act 28 of 2007

24. Section 24 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"24. Rights over roads or streets"; and

(b) by the substitution for subsection (1) of the following subsection:

"(1) (a) A transmission or distribution licensee may do all such things over, in or along roads or streets and associated infrastructure as may be necessary to carry out its licensed activities; and
(b) Any activity contemplated in paragraph (a) must be undertaken subject to the right of supervision and in accordance

with the plans, routes and specifications of the authority or person in control of that road or street, except in cases of emergency **[or where the authority concerned fails or refuses to co-operate with the licensee]."**

Amendment of section 26 of Act 4 of 2006, as amended by section 16(b) of Act 28 of 2007

25. Section 26 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The **[State]** Minister may, on application from a licensee in the prescribed manner and in order to facilitate the achievement of the objectives of this Act, permanently or temporarily expropriate land, or any right in, over or in respect of land, on behalf of a licensee in accordance with section 25 of the Constitution **[and section 2 of the Expropriation Act, 1975 (Act No. 63 of 1975)]."**

(b) by the substitution for subsection (3) of the following subsection:

"(3) The **[State]** Minister may exercise the powers contemplated in subsection (1) only if he or she is satisfied, after consultation with the Regulator, that—

(a) **[a]** the licensee is unable to acquire the land or **[a]** right in, over or in respect of such land by agreement with the owner; and

- (b) the land or any right in, over or in respect of such land is reasonably required by **[a]** the licensee for facilities which will enhance the electricity infrastructure in the national interest."; and
- (c) by the insertion after subsection (3) of the following subsections:

"(4) If the Minister expropriates any land or right in, over or in respect of land on behalf of a licensee in terms of subsection (1), such licensee shall become the owner of such land or the holder of such right in, over or in respect of land, as the case may be, on the date of the expropriation.

(5) The fees, duties and other charges that would have been payable by the licensee contemplated in subsection (1) in terms of any law if he or she had purchased the land or right in, over or in respect of land must be paid by the licensee in respect of the expropriation of that land or right in, over or in respect of land.

(6) The licensee contemplated in subsection (1) shall refund all costs incurred by the Minister in the performance of his or her functions in terms of this section, including the costs of valuing the land or right in, over or in respect of land and any compensation payable pursuant to section 25(3) of the Constitution.

(7) The Regulator shall undertake such investigations and provide such technical assistance as the Minister may require for purposes of exercising his or her functions under this section.

(8) The Minister may, in writing and on application from a transmitter in the prescribed manner, authorise that transmitter to permanently or temporarily expropriate land, or any right in, over or in respect of land in terms of section 25 of the Constitution, for purposes of the construction of transmission lines in respect of a particular project to be undertaken by the transmitter, provided that the transmitter may only exercise such power of expropriation if it is unable to acquire the land or right in, over or in respect of such land by agreement with the owner.

(9) The provisions of subsections (4) and (6) and the procedure prescribed in terms of subsection (2) shall, with the necessary changes, apply to an expropriation by a transmitter pursuant to an authorisation contemplated in subsection (8)."

Amendment of section 27 of Act 4 of 2006, as amended by section 10 of Act 28 of 2007

26. Section 27 of the principal Act is hereby amended by the substitution for paragraph (g) of the following paragraph:

"(g) regularly reporting and providing information to the Department of **[Provincial and Local Government]** Cooperative Governance and Traditional Affairs, the National Treasury, the Regulator and customers;"

Amendment of section 29 of Act 4 of 2006, as amended by section 10 of Act 28 of 2007

27. Section 29 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Regulator must, after consultation with the Minister, prescribe general key performance indicators in respect of the technical operational issues pertaining to reticulation systems for municipalities."

Amendment of section 30 of Act 4 of 2006, as amended by section 16(c) of Act 28 of 2007

28. Section 30 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs respectively:

- "(a) if it is a dispute between licensees, act as mediator or arbitrator if so requested by both parties to the dispute;
- (b) if it is a dispute between a customer or end user on the one hand and a licensee, registered person[,], or a person who trades[,], **generates, transmits, or distributes electricity** on the other hand, attempt to settle that dispute by such means and on such terms as the Regulator thinks fit."

(b) by the substitution for subsection (2) of the following subsection:

"(2) The Regulator may appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a

person so appointed is deemed to be an action by or decision of the Regulator.";

- (c) by the substitution for subsection (3) of the following subsection:

"(3) The **[Minister]** Regulator must prescribe the procedure to be followed in **[the]** a mediation and an arbitration and the fees to be paid.";

- (d) by the deletion of subsection (4); and

- (e) by the insertion after subsection (4) of the following subsection:

"(5) When acting as arbitrator, the Regulator or the person contemplated in subsection (2) must issue a decision on the matter, and such decision is binding on the parties to the dispute."

Deletion of section 31 of Act 4 of 2006

- 29.** Section 31 of the principal Act is hereby deleted.

Amendment of section 3 of Act 4 of 2006, as amended by section 16(c) of Act 28 of 2007

- 30.** Section 32 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

"(1) The Regulator must, in applicable circumstances, at its own instance or on receipt of a complaint **[or inquiry]** relating to **[the]**

generation, transmission, distribution, **[or]** trading or system operation,
investigate **[complaints]** and prepare a preliminary report in respect of—

(a) **[of]** alleged discrimination regarding tariffs or conditions of access;

(b) if a licensee is involved, **[of]** an alleged failure to abide by its
licensing conditions**;** **or]** ; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) On receipt of a preliminary report under subsection
(1), the Regulator may institute a formal investigation."

Insertion of Section 30 in Act 4 of 2006

30. The following section is hereby inserted in the principal Act after section 29:

30. Establishment of the Transmission System Operator (TSO)

(1) (a) The Minister of Public Enterprises will establish a juristic person to be known as the Transmission System Operator SOC Ltd in order to provide for an open market that will allow for a non-discriminatory competitive electricity trading platform.

31. Functions of TSO

(1) In relation to planning, TSO must—

develop a transmission expansion plan in accordance with anticipated electricity demand as per the integrated resource plan.

(2) In relation to system operation and expansion, TSO must—

(a) act as the System Operator and operate the integrated power system in a safe, secure, efficient and sustainable way;

(b) control the system voltages and system frequency within safe and sustainable limits;

(c) optimise real and reactive power flows to reduce losses whilst maintaining system security;

(d) coordinate transmission and generation outage and maintenance plans in accordance with the Grid Code requirements;

(e) prepare short-term load forecasts and dispatch schedules in accordance with Grid Code requirements;

(f) dispatch available generation in accordance with the dispatch schedules in the Grid Code as far as practically possible;

(g) maintain and operate a national control centre to control the integrated power system and related systems;

(h) direct the functioning of transmission operating centres located throughout the Republic and ensure that their operation is coordinated with the overall operation of the integrated power system;_____

- (i) serve as the operating interface to the operators of other transmission power systems and distribution power systems for planning and the real time operation of combined electrical systems;
- (j) maintain the real time balance of generation and electricity demand within the Republic and coordinate operation with adjacent control areas;
- (k) develop and implement the short-term operations plans and dispatch schedules using the resources that are procured or otherwise arranged for by the market operator;
- (l) coordinate with generation licensees with regard to the planning of maintenance in accordance with the Grid Code and international best practice to ensure that there is always sufficient capacity available to meet the demand;
- (m) coordinate with transmission operators and distribution operators with regard to the planning of maintenance in accordance with the Grid Code to ensure that there is always sufficient capacity available to deliver the required power safely and securely as far as is reasonably possible;
- (n) coordinate the start-up, shut-down and dispatch generation under its jurisdiction;
- (o) manage adequate operating reserves in accordance with the Grid Code as part of the dispatch activities;
- (p) implement system emergency plans and procedures as required to maintain an acceptable level of reliability;

(g) perform contingency studies in real time using live data from the control system state estimator or as required and react in due time to mitigate any possible risk for the integrated power system;

(r) perform a short-term, day to day, week to week, load forecast as an input into a short-term energy and capacity planning function;

(s) verify and record the generators' actual dispatch loading and the corresponding transmission load losses and conduct an assessment of the actual generation loading against the dispatch schedule; and

(t) keep a complete and accurate record of all the transmission systems loadings and associated dispatch on a half-hourly basis together with the dispatch schedules and costing.

(3) As the Transmitter, TSO must -

(a) implement infrastructure plans for the transmission network, incorporating the capacity and demand outlook to ensure reliable grid services to generators and customers;

(b) maintain and operate the transmission grid and coordinate outages;

(c) develop and implement transmission use of system charges and transmission charges but such transmission use of system charges and transmission charges must be developed and implemented subject to the approval of NERSA; and

(4) As a market operator, TSO must—

- (a) provide for a transparent, non-discriminatory trading platform for market participants, allowing willing buyers and willing sellers to trade
- (b) conclude and enter into transaction agreements as may be necessary for the procurement of electricity, including sufficient capacity and energy supply;
- (c) conclude transaction agreements as may be necessary for the procurement of ancillary services, interruptible load, load shifting or other demand-side options necessary for efficient and secure operation of the system;
- (d) in line with the Republic's international obligations, agreements and undertakings—
- (e) conclude electricity import agreements that ensure a reliable and stable supply of electricity for customers within the Republic; and
- (ii) conclude electricity export agreements, having regard to the interests of the Republic over the long term;
- (f) procure sufficient energy and capacity to be able to meet the projected load on the transmission power system and to serve its contractual commitments in accordance with the Electricity Regulation Act;
- (g) procure sufficient flexible resources to support TSO's 's real time function of balancing load to generation, including sufficient ramping capability (MW range and ramp rate) and automatic generation control capability (AGC) to meet the projected hour to hour and minute to minute system balancing requirements;_____
- (h) maintain sufficient black start capability (number of units, and location on the transmission power system) under contract in order to be able to restart

the system after a partial or total blackout, and ensure that this capability is functional through periodic performance testing;

- (i) enter into power sales agreements with TSO Customers;
- (j) ensure that metering points are established and maintained to allow billing quality metering of all electricity sales and purchases;
- (k) develop processes to manage the efficient implementation of agreements concluded with TSO Customers with regard to the trading of electricity;
- (l) develop processes to manage the efficient implementation of agreements concluded with TSO Customers with regard to the wheeling of electricity;
- (m) develop a risk management policy and associated implementing procedures to ensure that risks associated with the purchase and sale of energy, capacity or other products are addressed, including currency exchange and price risk;
- (n) develop and implement energy supply tariffs for all sales to TSO customers, but such energy supply tariffs must be developed and implemented subject to the approval of NERSA;
- (o) develop accounting procedures to reconcile the energy accounts and the monetary accounts related to the market and system operation; and
- (p) maintain a complete and accurate set of accounts for all the power system transactions.

Insertion of Section 32 in Act 4 of 2006

32. The following section is hereby inserted in the principal Act after section 31:

32 Market Structure

(1) In relation to the market structure,

(a) the structure will assume a competitive multi-market which will provide for ;
market transactions, physical bilateral transactions and regulated
transactions;

(2) In relation to market transactions, the market operator;

(a) will provide for a transparent, non-discriminatory trading platform for market
participants, allowing willing buyers and willing sellers to trade with each
other on an hourly and daily basis;

(b) market participants will trade energy in the day ahead market;

(c) market participants will supply reserves in the day ahead reserve market;

(d) Balance Responsible Parties will trade physicals after the day ahead market
closing with one another to account for changing circumstances ;

(e) Balancing Mechanism will be implemented to account for the differences
between the day ahead positions of the Balance Responsible Parties

(3) In relation to physical bilateral transactions,

(a) licensed and registered generators may enter into physical bilateral contracts
for energy production with customers and traders;

(b) The physical production and consumption positions arising from the physical
bilateral contracts will be declared to the Market Operator day-ahead; and

(c) the positions in section 32(3)(b) above must be treated as 'must-run' in the scheduling and dispatch processes of the System Operator.

(4) In relation to regulated transactions, the Central Purchasing Agency,

(a) will conclude PPAs with each generator to ensure sufficient supply to meet the demand.

(c) will conclude Sales Agreements with Distributors

(d) will trade all energy purchased under the PPA agreements into Day Ahead markets and act as the Balance Responsible Party.

(e) will procure ancillary services as required by System Operator

CHAPTER VE

GENERAL PROVISIONS

Insertion of Section 33 in Act 4 of 2006

33. The following section is hereby inserted in the principal Act after section 32:

(1) The Minister may make regulations, notices and schedules regarding—

(a) any matter relating to generation, distribution or transmission that is necessary to ensure security of energy; and

(b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe in order to ensure security of energy.

34. Offences and penalties

(1) A person commits an offence if he or she—

(a) fails to provide access to any books, accounts, documents or assets when required to do so in terms of this Act or when required by the Minister as contemplated in section 36; _____

(b) fails to give data or information, or give false or misleading data or information when required to do so in terms of section 36 or when required by the administrator contemplated in section 37(4);

(c) fails to comply with a directive issued under section 37(4)(c);

(d) intentionally refuses to perform a duty or obstructs any person in the exercise of a power or performance of a duty in terms of this Act;

(e) accepts any unauthorised fees or reward, either directly or indirectly, as a result of his or her position with TSO ;

(f) refuses to grant TSO access to land or property for electricity-related inspection; or

(g) impedes, interferes with or attempts to frustrate TSO in its attempt to gain access to the land or property.

(2) Any person who contravenes subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. (3) Where a person is again convicted for an offence contemplated in subsection (1), he or she is

liable to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

Insertion of Chapter VF in this Act 4 of 2006

The following Chapter is hereby inserted in the principal Act after section 66

CHAPTER VF

Amendment of section [31] 70 of Act 4 of 2006

Section [31] 70 of the principal Act is hereby amended by the substitution of the following paragraphs:

- (1) The Regulator must, in applicable circumstances, at its own instance or on receipt of a complaint relating to generation, transmission, distribution, trading_or system operation, investigate and prepare a preliminary report in respect of -
 - (a) alleged [of] discrimination regarding tariffs or conditions of access;
 - (b) if a licensee is involved, an alleged failure to abide by its licensing conditions.
- (2) On receipt of a preliminary report under subsection (1), the Regulator may institute a formal investigation.

(2) On receipt of a preliminary report under subsection (1), the Regulator may institute a formal investigation.

CHAPTER VIA

PLANNING

Integrated resource plan

[32A] 70. (1) The Minister shall, after consultation with the Regulator—

(a) compile the integrated resource plan; and

(b) revise the integrated resource plan at least every three years.

(2) The integrated resource plan shall be developed and revised in accordance with the following process:

(a) The Minister shall, with the assistance of the system operator, engage in electricity supply and demand scenario planning and prepare a document setting out various scenarios in respect of electricity supply and demand and the estimated costs of those scenarios, which the Minister shall publish for public comment in the *Gazette*;

(b) after considering any comments received in terms of paragraph (a), the Minister shall, with the assistance of the system operator, prepare a draft integrated resource plan, which shall be published for public comment in the Gazette; and

(c) after considering comments received in terms of paragraph (b), the Minister shall finalise the integrated resource plan and publish the plan in the Gazette.

(3) In preparing the integrated resource plan, the Minister must, as far as possible, ensure alignment with the transmission development plan and have regard to all relevant considerations, including—

(a) the location and condition of the current transmission and distribution power systems;

(b) the capacity of those systems;

(c) the extent to which the various electricity supply and demand scenarios will require the development; and

(d) strengthening or upgrading of those systems and the cost of such development, strengthening or upgrading.

(4) The Regulator and any licensee shall timeously provide such assistance and information as the system operator or the Minister may require for the purpose of compiling the integrated resource plan.

Transmission planning

[32B] 70A. (1) The system operator is responsible for transmission in respect of the development, strengthening, upgrading and refurbishment of the national transmission power system.

(2) The system operator must, with the approval of the Minister, develop, and annually revise, a transmission development plan setting out the manner in which the national transmission power system shall be developed, strengthened, upgraded and refurbished.

(3) The system operator must, as far as possible, ensure alignment between the transmission development plan and relevant aspects of the integrated resource plan.

(4) In preparing the transmission development plan, the system operator shall obtain input from the Minister and the Regulator.

(5) The transmission development plan shall be developed and revised in accordance with the following process:

(a) The system operator shall engage in transmission scenario planning and prepare a document setting out various scenarios in respect of transmission development, strengthening, upgrading and refurbishment, which the Minister shall publish for public comment in the *Gazette*;

(b) after considering any comments received in terms of paragraph (a), the system operator shall prepare a draft transmission development plan, which the Minister shall publish for public comment in the *Gazette*;

- (c) after considering comments received in terms of paragraph (b), the system operator shall finalise the transmission development plan and submit the proposed plan to the Minister for approval;
- (d) if the Minister refuses to approve the proposed transmission development plan, the system operator shall revise the proposed plan;
- (e) if the revision of the proposed transmission development plan envisaged in paragraph (d) involves material changes to the proposed plan, the system operator shall follow the process contemplated in paragraphs (b) and (c) in revising the proposed plan;
- (f) if the Minister approves the transmission development plan, the Minister shall publish the plan in the *Gazette*.
- (6) Notwithstanding the provisions of the transmission development plan, the transmitter of the national transmission power system and the system operator must co-operate with the Minister and any person acting as a procurer in terms of section 34(2)(e), to facilitate the establishment of any new generation capacity or electricity infrastructure, or acquisition of electricity, that is the subject of a section 34 determination."

Amendment of section 33 of Act 4 of 2006

32. Section 33 of the principal Act is hereby amended—

- (a) by the substitution of section **[33]** for subsection 71 paragraph (a) of the following paragraph:

"(a) at all reasonable times enter any property on which any activity relating to the supply of electricity is taking place, or is suspected to be taking place, to inspect any facility, equipment, machinery, book, account or other document relating to electricity found thereat; and"; and

(b) by the insertion after subsection (3) of the following subsection:

"(4) No information obtained by the Regulator in terms of this Act which is of a non-generic, confidential, personal, commercially sensitive or proprietary nature may be made public or otherwise disclosed to any person without the consent of the person to whom that information relates, except in terms of an order of the High Court."

Amendment of section 34 of Act 4 of 2006

33. Section 34 of the principal Act is hereby amended—

(a) by the substitution of section **[34]** for 71 subsection (1) of the following subsection:

"(1) The Minister may, **[in]** by notice in the Gazette, after consultation with the Regulator and the Minister of Finance, make a determination—

[(a) determine] that additional electricity or new generation capacity is needed to ensure the **[continued uninterrupted]** optimal supply of electricity;

- (b) by the deletion in subsection (1) of paragraphs (d) and (e);
- (c) by the insertion after subsection (1) of the following subsection:

"(2) A determination referred to in subsection (1) must include provisions dealing with—

(a) the extent of the new generation capacity required to be established, or electricity required to be produced, pursuant to such determination;

(b) [determine] the types of energy sources or technologies from which the electricity [must] may be generated[,] and an indication as to the [percentages] amount of electricity that [must] may be generated from each of such sources or technologies;

(bA) whether the generator or generators shall be independent power producers or an organ of state;

(bB) whether the electricity thus produced, or a stated portion thereof, must be purchased by a person designated in the determination as the buyer of such electricity;"

- (d) by the substitution of subsection (1)(c) to be subsection 2(c):
- (c) **[determine that]** whether the electricity thus produced, or a stated portion thereof, may only be sold to **[the persons or in the manner set out in such notice]** the buyer referred to in paragraph (bB);"
- (e) by the insertion in subsection (2) after paragraph (c) of the following paragraphs:

"(e) where applicable, the identity of the person responsible for preparing and conducting the procurement process for the acquisition of the electricity thus produced, which may be a person different from the buyer of such electricity;

(f) where applicable, the procurement process to be conducted for acquisition of the electricity thus produced, which may include—

- (i) a detailed stipulation of the procurement process in the determination;
- (ii) the stipulation in the determination of general principles governing the procurement process with which the procurement process determined by the person designated as the procurer in accordance with paragraph (e) must comply; or
- (iii) a provision stipulating that the person designated as the procurer in accordance with paragraph (e) will be responsible for determining the procurement process ; and

(g) the extent to which the new generation capacity contemplated in paragraph (a) may be established by independent power producers and the electricity thus produced supplied to customers pursuant to direct supply agreements.";

(f) by the insertion after subsection (2) of the following subsections:

"(3) The Minister may, by notice in the *Gazette*, after consultation with the Regulator and the Minister of Finance, make a

determination that new electricity infrastructure is needed to ensure the optimal supply of electricity.

(4) A determination referred to in subsection (3) may include provisions dealing with—

(a) the nature, type and extent of the required electricity infrastructure;

(b) whether or not the person who will construct, manage, maintain or operate the required electricity infrastructure (or engage in any combination of these activities), will be an organ of state;

(c) whether the person who constructs, manages, maintains or operates the required electricity infrastructure will own that infrastructure;

(d) whether the electricity infrastructure, or the electricity supplied by means of such infrastructure, will be purchased or used by a person designated in the determination as the buyer or user;

(e) whether the electricity infrastructure, or electricity supplied by means of the infrastructure, may only be sold to or used by the buyer or user referred to in paragraph (d);

(f) where applicable, the identity of the person responsible for preparing and conducting the procurement process for the establishment of the required electricity infrastructure, which may be a person different to the buyer or user referred to in paragraph (d); and

(g) the matters contemplated in paragraphs (i) to (iii) of subsection (2)(f).

(5) A determination referred to in subsection (1) or (3) may include provisions dealing with any ancillary matter that is necessary or desirable to facilitate the procurement of electricity, new generation capacity or electricity infrastructure, as the case may be.

(6) A determination contemplated in subsection (1) may be combined with a determination contemplated in subsection (3).

(7) In making a determination in terms of this section, the Minister—

(a) must have regard to the content of the integrated resource plan or the transmission development plan, as the case may be; and
(b) deviate from the integrated resource plan or transmission development plan in an emergency or if it is necessary to do so in the national interest.

(8) Prior to deviating from the integrated resource plan or transmission development plan as envisaged in subsection (7)(b), the Minister must publish a notice in the *Gazette*, inviting the public to comment on the proposed deviation.

(9) If it is reasonable and justifiable in the circumstances, the Minister may depart from the provisions of subsection (8).";

(g) by the substitution for subsection (2) of the following section:

"[(2)](10) The Minister has such powers as may be necessary or incidental to **[any purpose set out in subsection (1)]** giving effect to the determination referred to in subsection (1) or (3), including the power to—

- (a) undertake such management and development activities, including entering into contracts, as may be necessary to **[organise tenders and to facilitate the tendering process]** prepare and conduct procurement processes for the development, construction, commissioning and operation of **[such new]** electricity generation **[capacity]** facilities and electricity infrastructure;
- (b) purchase, hire or let anything or acquire or grant any right or incur obligations for or on behalf of the State or prospective **[tenderers]** participant in any relevant procurement process for the purpose of transferring such thing or right to a successful **[tenderer]** participant";
- (h) by the deletion of subsection (2)(c) and (d);
- (i) by the substitution of subsection (2)(e) of the following section in subsection (10):
 - "(e) subject to the Public Finance Management Act, 1999 (Act 1 of 1999), issue any guarantee, indemnity or security or enter into any other transaction that binds the State to any future financial commitment that is necessary or expedient for the development, construction, commissioning or effective operation of **[a]** public or

privately owned generation facilities or electricity **[generation business]** infrastructure.";

- (j) by the substitution of subsection (3) of the following subsection:

"**[(3)](11)** The Regulator, in **[issuing a generation licence—]** exercising its powers and performing its functions under this Act
[(a)] is bound by any determination made by the Minister in terms of subsection (1) or (3);"

- (k) by the deletion of subsection (3)(b);

- (l) by the substitution of subsection (4) of the following subsection:

"**[(4)](12)** In exercising the powers under this section the Minister is not bound by the State Tender Board Act, 1968 (Act No. 86 of 1968)."; and

- (m) by the insertion after subsection (12) of the following subsections:

"(13) For purposes of this section, "electricity infrastructure" means transmission facilities (and distribution facilities) or any other electricity infrastructure designated by the Minister by notice in the *Gazette* for this purpose, excluding electricity generation facilities.

(14) A determination contemplated in this section may establish an energy infrastructure project which includes not only new generation capacity and new electricity infrastructure but also other interconnected or related infrastructure, installations, buildings, structures, facilities, systems, services or processes, including gas infrastructure, in which case, the provisions of subsections (4) and (10) shall, with the

necessary changes, apply to such infrastructure, installations, buildings, structures, facilities, systems, services or processes.

(15) The Regulator must, in respect of an energy infrastructure project contemplated in subsection (14), exercise its powers and perform its functions under this Act and any other statute in a coordinated and integrated manner.

(16) The Minister may, in writing, direct the Regulator to conclude a memorandum of understanding with any other regulator in order to facilitate the coordinated establishment of an energy infrastructure project contemplated in subsection (14)."

Amendment of section 35 of Act 4 of 2006

34. Section 35 of the principal Act is hereby amended—

(a) by the substitution of section [34] for 72 in subsection (1) for paragraph (a) of the following paragraph:

"(a) licensees or associations of licencees;"

(b) by the insertion in subsection (2) after paragraph (a) of the following paragraph:

"(b) a methodology for the calculation of tariffs to be set or approved in terms of sections 14 or 14A, which methodology must be consistent with section 15 and any regulations prescribed in terms of section 35(4)(rA);" and

(c) by the insertion after subsection (2) of the following subsections:

"(2A) The system operator is responsible for the development and preparation of any codes of conduct and practice which are required for the maintenance of the security and efficient operation of the national transmission power system.

(2B) The codes contemplated in subsection (2A) shall be developed and revised in accordance with the following process—

- (a) the system operator shall develop a draft of the proposed code, with input from such parties as may be appropriate, which the Regulator shall publish on its website with an invitation to all licensees and other interested and affected parties to comment on the draft;
- (b) after considering any comments received in terms of paragraph (a), the system operator shall prepare a revised draft of the proposed code, which the Regulator shall publish for public comment in the Gazette;
- (c) after considering any comments received in terms of paragraph (b), the system operator shall finalise the proposed code and submit it to the Regulator for approval;
- (d) if the Regulator refuses to approve the proposed code, the system operator shall revise the proposed code;
- (e) if the revision of the proposed code envisaged in paragraph (d) involves material changes to the proposed code, the system

operator shall follow the process contemplated in paragraphs (b) and (c) in revising the proposed code;

(f) if the Regulator approves the code, the Regulator shall publish the code in the *Gazette*.

(d) by the insertion in subsection (3) after paragraph (c) of the following paragraph:

"(cA) transmission power systems, which transmission licensees may be required to conclude, within the period specified in the rules, with any generation licensee that requests access to that system;"

(e) by the insertion in subsection (3) after paragraph (d) of the following paragraph:

"(dA) the fees that may be charged in relation to, or by persons providing, specified services in connection with the supply of electricity;"

(f) by the substitution in subsection (3) for paragraph (i) of the following paragraph:

"(i) the fees to be paid in respect of mediation, arbitration and the settlement of disputes;"

(g) by the insertion after subsection (3)(k) of the following subsection:

"(3A) The Regulator must, after consultation with the Minister, make rules regarding the content of the transmission development plan, including rules relating to the inclusion in the plan of an analysis of grid connection capacity, reasonable timelines for the expansion and strengthening of the national transmission power system and the estimated cost of the transmission development, strengthening, upgrading and refurbishment envisaged in the plan."

(h) by the insertion in subsection (4) after paragraph (n) of the following paragraph:

"(nA) the rehabilitation of land used in connection with a licensed activity, including the provision of financial security for rehabilitation purposes and the composition and amount of such security;"; and

(i) by the insertion in subsection (4) after paragraph (r) of the following paragraphs:

"(rA) principles and procedures for the setting and approval of tariffs, maximum tariffs and guideline tariffs, including principles of cost recovery by licensees;

(rB) the provision of non-discriminatory access by transmission and distribution licensees to transmission and distribution power systems;

(rC) penalties to be imposed on a licensee for failing to comply with the obligation to engage in the activity authorised by its licence and, in the case of a generation licensee, for failing to comply with any minimum electricity output stipulated in its licence;

(rD) the content of power purchase agreements or particular types of power purchase agreements;

(rE) the establishment and management of a national information system;

(rF) the promotion of the establishment and operation of generation facilities with a capacity of 100 kw or less, which are operated by end users, generate electricity from a renewable source and are connected to a distribution power system;

(rG) the content of the integrated resource plan;

(rH) the separation of the generation, transmission, distribution, export, import, trading and system operation activities of licensees, which may include requirements that such activities must be managed separately, with separate accounts and data, and no cross-subsidisation;

(rI) the establishment and operation of the entity contemplated in section [35]73D;"; and

(j) by the insertion after section [35] 72 of the following sections:

"Delegation and assignment

[35]73A. (1) The Minister may, subject to such conditions he or she may impose, in writing delegate any power conferred on him or her under this Act, except a power to make regulations, and may assign any duty so imposed on him or her, to the Director-General of the Department of Mineral Resources and Energy or any other officer in that Department.

(2) The Minister may at any time—

(a) withdraw a delegation or assignment made in terms of subsection (1); or

(b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1).

(3) The Minister is not divested of any power or exempted from any duty delegated or assigned in terms of subsection (1).;

Offences and penalties

[35]73B. (1) Any person who wilfully—

- (a) contravenes the provisions of section 7(1) or 7(1B);
- (b) fails to comply with a direction issued in terms of section 7(1D)(b);
- (c) obstructs or hinders any person authorised in terms of section 33(1) in the exercise of his or her powers under section 33;
- (d) makes any false or misleading statement to the Regulator in connection with any matter contemplated in this Act; or
- (e) without lawful authority, damages, removes or destroys any transmission, distribution or reticulation cable, equipment or infrastructure.

shall be guilty of an offence.

(2) Any person who is convicted of an offence referred to in subsection (1) shall be liable to a fine not exceeding R1 000 000,00 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Transitional provisions

36. From the date that this Act comes into effect until the incorporation of the TSO, which period shall not last longer than 5 (five) years, the Eskom transmission subsidiary is for all purposes deemed to be the TSO and must perform the functions outlined in section 31 above.

Amendment of Arrangement of Sections in Act 4 of 2006

35. The Arrangement of Sections after the long title of the principal Act is hereby amended by—

- (a) by the insertion after "13. Finalisation of application" of the following:
"13A. Prerequisites for granting of generation licences";
- (b) by the insertion after "14. Conditions of licence" of the following:
"14A. Pre-approval of tariffs and licence conditions";
- (c) by the substitution for "24. Rights over streets" of the following:
"24. Rights over roads or streets";
- (d) by the insertion after the expression of "Chapter VIA" of the following:
"Planning
[32A]70. Integrated resource plan
[32B]70A. Transmission planning";
- (e) by the substitution for "34. New generation capacity" of the following:

"34. Additional electricity, [New] new generation capacity and electricity infrastructure"; and

(f) by the insertion after "35. Regulations, rules, guidelines, directives and codes of conduct and practice" of the following:

"[35]73A. Delegation and assignment

[35]73B. Offences and penalties

[35]73C. Transitional provisions

[35]73D. Establishment of a new entity"

Short title and commencement

[36] 74. This Act is called the Electricity Regulation Amendment Act, 2020, and comes into operation on a date determined by the President.

Amendment of Schedule 2 of Act 4 of 2006

Schedule 2 of the principal Act is hereby amended by the substitution for paragraph (1)(2) of the following paragraph:

SCHEDULE 2**EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE****Activities exempt from licensing and registration**

1. The following activities are exempt from the requirement to apply for, and hold a licence under the Act and these activities are not required to be registered with the Regulator-
 - 1.1 The operation of a generation Facility with or without energy storage for the sole purpose of providing standby or back-up electricity in the event of, for a duration no longer than, an electricity supply interruption.
 - 1.2 The operation of any generation Facility with or without energy storage irrespective of capacity (MW), the Facility does not have a Point of Connection.
 - 1.3 The operation of a facility with a capacity of no more than 100 kilowatts which complies with the Code and has a Point of Connection; the Distributor has prescribed the conditions relating to the continued use of the Point of Connection; and the Regulator has prescribed the manner in which the Distributor shall keep a register of each Facility.
2. The following activities are exempt from the requirement to apply for and hold a licence under the Act, but these activities must comply with the Code and must be registered with the Regulator:

Activities with a capacity of no more than 100MW, exempt from licensing and must be registered with the Regulator

- 2.1 The operation of a generation Facility with or without energy storage, with a capacity of no more than 100 MW with a Point of Connection on the transmission or distribution power system, in circumstances where –
- 2.1.1 the generation Facility is operated to supply electricity to one or more customers and there is no wheeling of that electricity;
- 2.1.2 the generation Facility is operated to supply electricity to one or more customers by wheeling; and the generator has entered into a connection agreement with the holder of the transmission or distribution licence in respect of the power system over which the electricity is to be wheeled;
- 2.1.3 the generation Facility has a connection point but does not export nor import any electricity onto or from the transmission or distribution power system.

Other activities exempt from licensing and require registration

- 3.2 The operation of a generation Facility with or without energy storage for demonstration purposes only, whether or not the Facility is connected to a transmission or distribution power system and will be in operation for not more than 36 months.
- 3.3 The continued operation of an existing generation Facility with or without energy storage which, immediately prior to the date of commencement of this Schedule, was exempt from the requirement to apply for and hold a licence under the Act, must register with the Regulator within six months of commencement of this schedule subject to –
- 3.3.1 the generation Facility having complied with the Code and is connected to the transmission or distribution power system.
- 3.4 The operation of a distribution Facility up to the Point of Connection that connects the generation Facility contemplated in items of 3.1 and 3.3 above where there is conveyancing of electricity through the transmission or distribution power system.

3.5 The trading of electricity by a reseller in circumstances where –

3.5.1 the price charged by the reseller to customers does not exceed the tariff that would have been charged to such customers for the electricity if it had been purchased from the holder of a distribution licence for the area in which the electricity is supplied to the customer; and

3.5.2 the reseller has entered into either a service delivery agreement in accordance with the Municipal Systems Act, (Act No 32 of 2000) (where the licensed distributor is a municipality) or a similar agreement with the distributor (where the licensed distributor is not a municipality) that regulates the relationship between the reseller and the holder of the distribution licence and the obligations of the reseller in respect of the quality of supply to customers; and the Regulator has ratified the general terms and conditions of such service delivery agreement.

Revocation and deregistration

4. The Regulator may vary, suspend or remove any registration on receipt of an application by a registrant or on application by a third party or upon violation of the regulatory requirements to comply with the Code.

5. The Regulator may revoke a registration under the following circumstances –

5.1 On application by a registrant or the facility is no longer required or when the conditions of registration are not met.

6. A registrant must, in the circumstances contemplated in item 5.1 give the Regulator at least 6 months' notice in writing of his or her intention to cease activities, unless the Regulator determines otherwise.

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