

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES AND ENERGY

NO. 6101

3 April 2025

ELECTRICITY REGULATION ACT, 2006

DRAFT

INVITATION FOR PUBLIC COMMENTS ON DRAFT ELECTRICITY TRANSMISSION

INFRASTRUCTURE REGULATIONS

I, **KGOSIENTSHO RAMOKGOPA, MP**, Minister of Electricity and Energy, under section 35(4) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), and after consultation with the National Energy Regulator of South Africa, intend to make the regulations in the Schedule.

Interested persons and organisations are invited to submit written comments on the proposed Electricity Transmission Infrastructure Regulations, within 30 days from the date of publication of this notice, by—

- (a) post to: Private Bag X 96, Pretoria, 0001; or
- (b) hand delivery to: Matimba House, 192 Visagie Street, Cnr Paul Kruger, Pretoria; or
- (c) email to: Donald.Ndobe@dmre.gov.za.

Comments must be addressed to the Director-General, Department of Mineral Resources and Energy, and marked for the attention of Mr. Donald Ndobe.

Kindly provide the name, address, contact telephone number, fax number and email address of the person or organisation submitting comments.

Comments received after the closing date will not be considered.



DR KGOSIENTSHO RAMOKGOPA, MP

Minister of Electricity and Energy

Date: 13/02/25

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Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned to in the Act, has the same meaning so assigned and, unless the context otherwise indicates—

“buyer” means the person designated by the Minister, as contemplated in section 34(3)(d) and (e) of the Act, as a buyer of electricity transmission infrastructure, which is the subject of a determination;

“determination” means a determination made by the Minister in terms of section 34(1)(b), read with section 34(3) and (4) and, where applicable, section 34(12), of the Act;

“energy infrastructure project” means a project contemplated in section 34(12) of the Act;

“Government” means the government of the Republic of South Africa;

“IRP” means the integrated resource plan applicable at the date of publication of a determination by notice in the *Gazette*;

“National Treasury” means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“organ of state” has the meaning assigned to it in section 239 of the Constitution of the Republic of South Africa, 1996;

“private party” means a person, consortium or joint venture in which the Government or other organs of state do not hold a controlling ownership interest either directly or indirectly;

“procurer” means the person designated by the Minister in a determination, as the person responsible for the preparation, management and implementation of the activities related to the procurement of transmission capacity, including the negotiation of the applicable transmission services agreements, which person may or may not be the buyer or user;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"TDP" means the transmission development plan applicable at the date of publication of a determination by notice in the *Gazette*;

"the Act" means the Electricity Regulation Act, 2006 (Act No. 4 of 2006);

"transmission capacity" means the electricity transmission infrastructure and associated activities that are the subjects of a determination, and which may include the design, construction, funding, management, maintenance or operation of such electricity transmission infrastructure;

"transmission service provider" means a private party, selected pursuant to a procurement process specified in a determination, to establish transmission capacity on the basis that the transmission capacity in question will be made available to a user or purchased by a buyer;

"transmission services agreement" means the contractual arrangements entered into between a user and a transmission service provider, or a buyer and a transmission service provider, as applicable, establishing their respective rights and obligations in respect of the transmission capacity;

"TSO SOC" means the Transmission System Operator SOC Limited to be established in terms of section 34A of the Act, and for the period prior to establishment of TSO SOC, the National Transmission Company South Africa SOC Limited;

"user" means a person designated by the Minister as contemplated in section 34(3)(d) and (e) of the Act as a user of electricity transmission infrastructure, which is the subject of a determination; and

"value for money" means that the transmission capacity procured according to a determination results in a net benefit to the buyer or user as the case may be or to the

Government, having regard to cost, price, quality, quantity, risk transfer, social and economic benefit, or a combination thereof.

Application of Regulations

2. (1) These Regulations apply to—

- (a) the consultation requirements in respect of determinations;
- (b) determinations for the procurement of transmission capacity from transmission service providers; and
- (c) other matters, which may facilitate the effective implementation of determinations.

(2) These Regulations do not apply to—

- (a) the establishment of new electricity transmission infrastructure by TSO SOC;
- (b) the procurement of transmission capacity by TSO SOC on its own initiative;
- (c) the carrying on by TSO SOC, in the ordinary course, of its transmitter functions as provided for in section 34B(1) of the Act or in its licence.

(3) Where the person designated by the Minister as the procurer in a determination is also the buyer or user, references to the procurer in these Regulations should, where applicable, be understood as references to the buyer or user in its capacity as the procurer.

Objectives of Regulations

3. The objectives of these Regulations are—

- (a) to facilitate planning for the procurement and establishment of transmission capacity by private parties in order to expedite the establishment of new electricity transmission infrastructure;

- (b) to support measures to enhance the reliability and security of the national transmission power system;
- (c) to facilitate electricity generation connection into the transmission power system; and
- (d) to ensure consistency and predictability in the implementation of section 34(1)(b) of the Act.

Deviation from IRP or TDP

4. (1) For purposes of assessing whether a proposed determination will necessitate a deviation from the IRP or the TDP as contemplated in sections 34(6)(b) and 37 of the Act, the Minister must consider, amongst other relevant factors—

- (a) whether the circumstances prevailing at the relevant time, warrant the making of a determination which deviates from the IRP or the TDP;
- (b) the extent to which the IRP or TDP appropriately orders or prioritises transmission capacity requirements, with reference to the urgency, impact, feasibility and readiness amongst other relevant factors; and
- (c) the key components of the electricity transmission infrastructure that will be required for purposes of establishing the transmission capacity in question.

(2) If the Minister proposes the making of a determination, which deviates from the IRP or TDP, the Minister must, subject to section 34(8) of the Act, publish a notice in the *Gazette*, which includes the rationale for, and scope of the proposed deviation, and invite the public to comment on the proposed deviation.

(3) The Minister must consider any comments received from the public in response to the *Gazette* notice referred to in subregulation (2), for purposes of preparation of the consultation materials referred to in regulation 5(1)(c).

Consultation

5. (1) For purposes of prior consultation in terms of section 34(1) of the Act, the Minister must submit to the Regulator and the Minister of Finance—

- (a) the terms of the proposed determination, as contemplated in section 34(3) and (4) of the Act;
- (b) an explanation of the rationale for the Minister's proposals regarding the items referred to in section 34(3)(c), (d), (e) and (f) of the Act, to the extent applicable to the proposed determination;
- (c) where the Minister proposes a deviation from the IRP or TDP, an explanation of the rationale for and scope of any such deviation; and
- (d) details of the anticipated timing of the determination and, to the extent available, the anticipated timing of the procurement and establishment of the selected transmission capacity.

(2) The Regulator and the Minister of Finance must provide their written comments to the Minister within 30 days of receipt of the submissions referred to in sub-regulation (1).

(3) The Minister must consider all the written comments received from the Regulator and the Minister of Finance before finalising a determination.

Determinations

6. (1) The Minister must, in a written determination in terms of section 34(3) and (4) of the Act, identify the transmission capacity required.

(2) The Minister must specify, in writing, in a determination, the identity of the buyer or user, as the case may be, and the procurer for the transmission capacity required.

(3) For purposes of identifying ancillary matters to be included in a determination as contemplated in section 34(4) of the Act, the Minister must consider whether to determine any of the following matters:

- (a) The extent and scope of any activities that will be undertaken by the Minister to facilitate the implementation of a determination, as contemplated in section 34(9) of the Act; and
- (b) any feasibility studies or other preparatory activities that must be undertaken before the commencement of a procurement process in respect of transmission capacity.

(4) The effect of a determination is that the transmission capacity concerned must be procured in accordance with the terms of the determination and the applicable laws, and may not be established by the TSO SOC on its own initiative.

(5) If the Minister makes a determination in respect of transmission capacity in respect of which the TSO SOC has undertaken management or development activities prior to the date of the determination, the TSO SOC must make available to the procurer all the relevant information regarding those management or development activities and cooperate with the procurer to the extent necessary for purposes of conducting the procurement process.

(6) The buyer or user, as the case may be, and the procurer are bound by the determination and must do all that is necessary to give effect to and enable the implementation of the determination.

(7) The buyer or user, as the case may be, is bound by the outcome of a procurement process conducted by the procurer following a determination and must, in the absence of manifest error, conclude the transmission services agreement with the

transmission service provider and do all that is necessary following the conclusion of the procurement process to implement the transaction.

(8) Subject to compliance with regulation 5 and the vested rights of third parties, the Minister may amend or revoke a determination at any time, in writing.

Feasibility studies

7. (1) The Minister may, prior to finalisation of a determination, or the procurer may, prior to or in the course of the implementation of a determination, undertake or commission a third party to undertake a feasibility study in respect of the transmission capacity, which is, or may be, the subject of a determination.

(2) The Minister and the procurer must have regard to any relevant feasibility study undertaken pursuant to sub-regulation (1) when making or implementing a determination, as the case may be.

(3) The following shall form part of the considerations and outcomes for the feasibility study undertaken contemplated in sub-regulation (1):

- (a) The anticipated costs of the transmission capacity or energy infrastructure project;
- (b) the proposed allocation of key financial, technical and operational risks between the prospective buyers or users and the transmission service providers; and
- (c) the material legal, financial and technical requirements, including consents that will be required in order to establish the transmission capacity or energy infrastructure project.

Cross-border transmission capacity

8. (1) A determination may require or contemplate that cross-border transmission capacity be established, provided the Minister is satisfied that adequate agreements, memoranda of understanding or other arrangements are in place or will be in place between the Government and the relevant foreign government or utility or international organisation, as are necessary to enable the establishment of the transmission capacity in question.

(2) Where a determination requires or contemplates that cross-border transmission capacity be established, the procurement process shall be planned and conducted with due regard to any agreements, memoranda of understanding or other arrangements referred to in sub-Regulation (1).

Energy infrastructure projects

9. (1) Before making a multi-component determination in respect of an energy infrastructure project, the Minister must be satisfied, based on a feasibility study, that it would be advantageous to the Government for the required new generation capacity, electricity transmission infrastructure and other interconnected or related infrastructure and other matters contemplated in section 34(12) of the Act to be combined into an energy infrastructure project.

(2) In a determination in respect of an energy infrastructure project, the Minister must specify the key components of the new generation capacity, the electricity transmission infrastructure and the other interconnected or related infrastructure and other matters contemplated in section 34(12) of the Act that will be the subject of such energy infrastructure project.

(3) For purposes of preparing and making a determination in respect of an energy infrastructure project, the provisions of Regulations 4, 5, 6, 7 and 8 apply with the necessary changes.

Transmission services agreements

10. (1) Before the buyer or user, as the case may be, enters into a transmission services agreement, the procurer must ensure that the transmission services agreement—

- (a) represents value for money;
- (b) transfers appropriate technical, operational and financial risks to the transmission service provider;
- (c) contains effective mechanisms for the implementation, management, enforcement and monitoring of the transmission services agreement; and
- (d) permits adequate due diligence by the buyer or user, as the case may be, in respect of the transmission service provider's competence and capacity to meet its obligations in terms of the transmission services agreement.

(2) The buyer or user must cooperate in good faith with the procurer and any transmission service provider to ensure that the required interface between the buyer or user and a transmission service provider is comprehensively provided for in the transmission services agreement and is given practical effect in a manner which maximises coordination and efficacy in the national interest.

(3) For purposes of sub-regulation (2), the buyer or user must provide the procurer and transmission service provider with such information and documentation, and with such access to its transmission power system, as required to ensure an effective interface with the transmission service provider.

Cost recovery

11. (1) The Regulator shall, when determining licence conditions relating to the setting or approval of prices, charges, rates and tariffs charged by licensees and when setting or approving a transmitter's tariffs, ensure that the buyer or user is able to recover, at least, the full amount of the costs incurred by the buyer or user in the following categories:

- (a) Capacity or availability payments or any other compensation mechanism provided for in the transmission services agreement, made for transmission capacity;
- (b) expropriation costs and reimbursement to the transmission service provider for the costs of acquisition of servitudes and similar rights;
- (c) any other payments made by the buyer or user in terms of a transmission services agreement, provided the buyer or user acted in accordance with its contractual rights and obligations;
- (d) the efficiently incurred costs of the buyer or user in administering, managing and reporting in respect of a transmission services agreement;
- (e) the costs of, and amounts paid by, the buyer or user arising from the termination of a transmission services agreement; and
- (f) all other costs efficiently incurred by the buyer or user in giving effect to a determination.

(2) The buyer or user designated as such in a determination may request the Regulator to issue a cost recovery assurance letter to them before entry into transmission services agreements, and the Regulator must respond within 30 days, confirming the categories of costs that will be recoverable through the transmitter's tariffs.

(3) The buyer or user, as the case may be, must, upon request, provide the Regulator with such documentation as is reasonably required by the Regulator for purposes of finalising the cost recovery assurance letter.

Exemptions

12. (1) The Minister, by notice in the *Gazette*, may, where justifiable having regard to all the circumstances and subject to any terms and conditions that he or she considers appropriate, exempt any person, whether in relation to a specific transmission infrastructure project or in general, from complying with any or all of the provisions of these Regulations, for the period specified in the notice.

(2) An application for exemption must be made in writing to the Minister and must include details of the basis for the requested exemption and the measures or steps that will be implemented to mitigate the risks that may arise as a result of non-compliance with the Regulations, for which exemption is sought.

(3) The Minister may amend or revoke a published exemption after consultation with affected persons, if the continued operation of that exemption would undermine the objectives of the Regulations or compromise the security of energy supply in the Republic.