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INFRASTRUCTURE & ENERGY

The Electricity Regulation Amendment Bill: A New Era for the Energy Sector?

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The Electricity Regulation Amendment Bill [B 23 – 2023] (the Bill), has been published for comment and aims to introduce an array of significant amendments to the Electricity Regulation Act 4 of 2006 (ERA). The Bill was tabled before Parliament on 23 August 2023 for its consideration.

Call for comments by the Portfolio Committee on Mineral Resources and Energy opened on 17 September 2023, and submissions must be received by no later than 13 October 2023.

The previous version of the bill, published in February 2022 [B – 2021] differs from this version of the Bill in certain areas.

This article sheds light on the significant amendments introduced by this Bill and its implications, which will reshape the electricity generation, transmission and distribution landscape in South Africa.

A Competitive Electricity Supply Market

At the core of the Bill lies the aspiration to create a competitive electricity market. The Bill enforces third party access to the transmission and distribution system based on published tariffs, applicable to all customers and applied objectively, without discrimination. Refusal by a licensee to grant access is only permissible when capacity limitations exist, accompanied by clear written justifications.

The Introduction of Key Role Players in the Electricity Sector

The following key role players are proposed to be introduced in the electricity sector:

- Transmitter – this role is tasked with overseeing infrastructure plans for the transmission network and the development and implementation of transmission use of system charges.
- System Operator – the System Operator has a multifaceted role, including the operation of the integrated power system. Furthermore, it is obligated to collaborate with the Minister and procurer to facilitate the establishment of new generation capacity or electricity transmission infrastructure. This cooperation comes into play when a section 34 determination under the ERA is in effect.
- Market Operator – the Market Operator is required to provide a trading platform market, along with market rules and criteria.
- Central Purchasing Agency – this agency is responsible for the procurement of electricity, including ensuring sufficient capacity and energy supply.

This is in line with the unbundling of Eskom. The Bill requires the Minister of Public Enterprises to establish the Transmission System Operator SOC Limited (TSO) within 5 years, to fulfil the above-mentioned functions. Interim provisions are made to

accommodate this transition, including that the National Transmission Company South Africa SOC Limited will fulfil assume the role and responsibilities of the TSO. The National Energy Regulator of South Africa (NERSA) will oversee this transition.

Registration and Licensing

The Bill streamlines licensing requirements and introduces mandatory registration for activities not requiring licensing. Notably, facilities solely providing standby or backup electricity, those without a point of connection, and small-scale facilities under 100 kilowatts are exempted, provided that they register with NERSA and comply with specific conditions.

This is in line with the amendment of Schedule 2 of the ERA, Licensing Exemption and Registration Notice 2023 (the Amendment). Following the Amendment which granted certain generation facilities an exemption to be licenced which will only require registration. Registrants will be required to comply with the applicable technical codes, regulatory requirements and payment of fees imposed for granting registrants access to their network.

NERSA's Powers

The proposed amendments empower NERSA further, granting it authority over a broader range of activities and giving it the power to issue, amend, withdraw, suspend, and revoke licenses. The registration, revocation, and deregistration of entities or activities will also be under its purview.

It appears that previous licensees, such as generation facilities will be required to follow this process to deregister.

Additionally, the Bill broadens NERSA's powers to act as an arbitrator, in addition to its mediatory function. NERSA will also be empowered to investigate, either following a complaint or of its own accord, any matters pertaining to licensing or registration.

Pricing and Tariffs

In a significant departure from the current approach under the ERA, the Bill redefines NERSA's role regarding pricing. NERSA will no longer be required to regulate pricing but will take on the responsibility of setting and approving tariffs.

In setting approved tariffs, NERSA must allow licensees to recover their costs, including a reasonable margin or return. Additionally, NERSA needs to take into account the promotion of renewable energy and consider the need for security and diversity of supply.

The Bill provides an exception allowing a licensee to charge a tariff not approved or set by NERSA which is a result of a competitive market or a direct supply agreement.

The Minister's Role

As currently provided for under section 34 of the ERA, which operates as the legislative framework by which the Minister is authorised to make determinations regarding the need for additional electricity or new generation capacity, any decision taken by the Minister in that regard has no force and effect unless NERSA agrees with the Minister's decision.

The Bill vests the power in the Minister solely (after consultation with the Minister of Finance and NERSA, and by notice in the gazette) to make a determination in relation to additional electricity and new generation capacity to ensure the uninterrupted supply of electricity. This authority can be invoked in cases of market failure, emergencies or national interest. One of the most notable shifts is that NERSA will be bound by the Minister's determination and the Minister is not bound by the state tender board act in exercising his powers in this regard.

It is anticipated that the Bill will provide for much needed change in the electricity sector, promoting the growth of independent power producers to compete with Eskom. As the call for comments on the Bill is now open, it is vital for stakeholders to provide input on the Bill which will have vast implications for years to come.



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