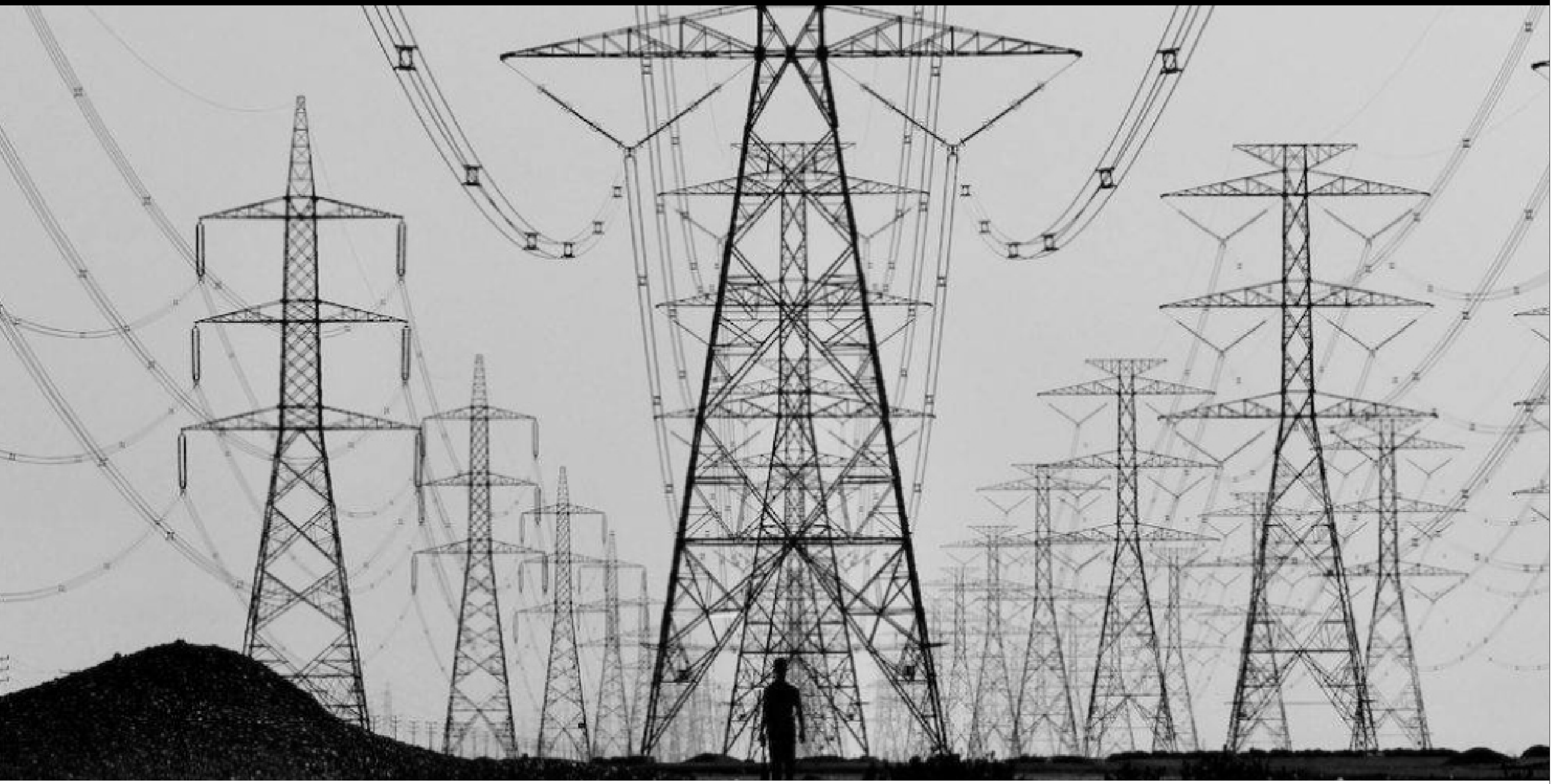

BANKING & FINANCE

Watt You Need to Know on the draft Electricity Transmission Infrastructure Regulations

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The draft regulations to facilitate planning for the procurement and establishment of transmission capacity by private parties ("the Regulations") were recently gazetted on 3 April 2025 by the Department of Energy and Electricity.

The Regulations are currently open for public comment, with the closing date for such comments being 3 May 2025.

The Regulations follows the Ministerial determination for the establishment of 1164km of new transmission powerlines in strategically chosen corridors in the Northern Cape, North West and Gauteng by August 2029, which powerlines will ultimately yield a new generation capacity of 3222MW.

The Regulations, which are broken down below, focus primarily on a range of relevant issues in regard the procurement of new electricity transmission infrastructure and signify an important milestone in private sector involvement in this pivotal industry.

According to section 34(1) of the Electricity Regulation Act 4 of 2006 ("**ERA**"), the Minister of Mineral Energy and Electricity ("**the Minister**") may, in the event of the failure of a market or an emergency, or for the purposes of ensuring security of energy supply in the national interest, after *consultation with the National Energy Regulator of South Africa ("NERSA") and the Minister* *of Finance*, by notice in the Gazette, make a determination that, inter alia, new electricity transmission infrastructure is needed to ensure the optimal supply of electricity.

Sections 34(3) and (4) of the ERA set out the various types of provisions that may be included in the determination, namely –

1. the nature, type and extent of the required electricity transmission infrastructure;
2. whether such infrastructure will be managed, maintained and/or operated by an organ of state;
3. whether the person who constructs, manages, maintains or operates the electricity transmission infrastructure will also own the infrastructure;
4. whether the electricity transmission infrastructure (or the electricity supplied by means of the infrastructure) will be purchased or used by a person designated in the determination as the buyer (or user), as well as whether the infrastructure or electricity in question may only be sold or used by such buyer (or user);
5. the manner in which the procurement process for the establishment of the required electricity transmission infrastructure will be conducted; and
6. provisions dealing with relevant ancillary matters.

Such determinations may also establish an energy infrastructure project. This type of project includes new generation capacity and new electricity transmission infrastructure, as well as other interconnected or related infrastructure, installations, buildings, structures, facilities, systems or processes, including gas infrastructure.

Recent Ministerial Determination

Three days before the Regulations were published, a significant determination was announced in terms of section 34 of the ERA. This determination envisions the establishment of 1164km of new transmission powerlines in strategically chosen corridors in the Northern Cape, North West and Gauteng by August 2029, which powerlines will ultimately yield a new generation capacity of 3222MW. This pilot programme has been described by the Minister as a “step change” in the industry, as it signifies the beginning of major private sector investment and participation in this sphere. As such, this determination is closely linked to one of the key objectives of the Regulations below.

The Minister has confirmed that this forms part of the Government’s stated intention to combat structural constraints and logistical inefficiencies insofar as electricity transmission in South Africa is concerned, and ultimately to contribute to energy security and the growth of the economy as a whole. As such, this programme has specifically designed in such a way so as to incentivise public sector involvement. For example, the Minister has explained that it will be based on the principle of “late stage tender”, meaning that the Government will take responsibility for issues relating to servitudes and rights of way, as well as environmental impact assessments and licencing. Such issues ideally being expedited and resolved in order for the relevant development rights and permits being in place, prior to private sector involvement, in order to alleviate any related burdens being placed on private sector players and to avoid any delays that may arise as a result.

Practically, the first stage of the programme will be a request for qualification in July 2025, after which there will be a request for proposals in November 2025 and then an evaluation thereof. As such, this determination will inevitably be impacted by the Regulations and will provide a useful example of how they will play out in practice, particularly given that both of these developments have the same stated goal of facilitating private sector participation in this sector.

Application of The Regulations

The Regulations apply to, *inter alia*, the consultation requirements in respect of such determinations and determinations on transmission capacity procurement from transmission service providers.

It is worth noting that the Regulations also provide for instances where the Minister may, upon application and by notice in the Gazette, allow for certain exemptions from compliance with the Regulations.

The Regulations will not apply to the Transmission System Operator SOC Limited **(“the TSO SOC”)**, even once it is established.

Objectives of The Regulations

The Regulations have four key objectives, namely to –

1. facilitate planning for the procurement and establishment of transmission capacity by private parties in order to expedite the establishment of new electricity transmission infrastructure;
2. promote measures to enhance the reliability and security of the national transmission power system;
3. facilitate electricity generation connection into the transmission power system; and
4. ensure consistency and predictability insofar as determinations that new electricity transmission infrastructure is needed to ensure the optimal supply of electricity are concerned.

Summary of The Regulations

a) Deviations from the IRP and the TDP

Sections 34(6)(b) and 37 of the ERA state that when the Minister makes a determination, the Minister must have regard to the Integrated Resources Plan ("IRP") and/or the Transmission Development Plan ("TDP") but may deviate from such plans in an emergency or if it is in the national interest to do so.

The Regulations set out various factors that the Minister ought to consider when assessing whether such a deviation is required. These factors include –

1. whether the relevant prevailing circumstances warrant such a deviation;
2. the extent to which the IRP or TDP appropriately orders or prioritises transmission capacity requirements, with reference to factors, such as urgency, impact, feasibility and readiness;
3. the key components of the infrastructure that will be required for purposes of establishing the transmission capacity in question; and
4. other relevant factors.

The Regulations then reiterate what is stated in sections 34(7) and (8) of the ERA, namely that if the Minister intends to make a determination containing such a deviation, unless it is reasonable and justifiable not to do so in the circumstances, the Minister must publish a notice in the Gazette, inviting the public to comment on the proposed deviation. The Regulations go on to specify that such notice must also include the rationale for and the scope of the proposed deviation.

b) Consultations

When the Minister intends to make a determination, the Minister must first consult with NERSA and the Minister of Finance.

According to the Regulations, to meet this requirement, the Minister must submit to NERSA and the Minister of Finance –

1. the terms of the proposed determination;
2. an explanation of the rationale for the Minister's specific proposals
3. an explanation of the rationale for and scope of any proposed deviation from the IRP or TDP. In this regard, if the Minister receives any comments from the public in response to the notice, the Minister must consider these comments for purposes of preparing this explanation; and
4. details of the anticipated timing of the determination and of the procurement and establishment of the selected transmission capacity.

Once the Minister has submitted the abovementioned materials, NERSA and the Minister of Finance have 30 days (from the date of receipt of the submissions) to provide the Minister with their written comments. The Minister must then consider all of these comments, before the determination is finalised.

c) Determinations

In a written determination which states that new electricity transmission infrastructure is needed to ensure the optimal supply of energy, the Minister must specify the –

1. transmission capacity required;
2. identity of the buyer or user; and
3. procurer for the transmission capacity required.

The Minister may also include provisions dealing with ancillary matters in the determination. When deciding whether to do so, the Regulations require the Minister to specifically consider –

1. the extent and scope of any activities that will be undertaken by the Minister to facilitate the implementation of a determination; and
2. 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 such determinations

The transmission capacity concerned must be procured in accordance with the terms of the determination and the applicable law. It may not be established by the TSO SOC on its own initiative.

If a determination is made in respect of transmission capacity where the TSO SOC has already undertaken management or development activities (prior to the date of the determination), the TSO SOC must provide the procurer with all relevant information regarding those activities and must cooperate with the procurer to the extent necessary for purposes of conducting the procurement process.

The buyer or user is –

1. together with the procurer, bound by the determination and must do all that is necessary to give effect to and enable the implementation of the determination; and
2. bound by the outcome of a procurement process conducted by the procurer following a determination and must conclude the transmission services agreement with the transmission service provider and then do all that is necessary to implement the transaction.

The Minister may still amend or revoke a determination in writing at any time.

5. Feasibility studies

Feasibility studies may be undertaken in respect of the transmission capacity when it is (or may be) the subject of a determination. These studies may be undertaken by the Minister (prior to the finalisation of a determination) or the procurer (prior to or in the course of the implementation of a determination). Either of these parties could also commission a third party to undertake such a study. The Minister and the procurer must then have regard to the feasibility study when making or implementing the determination.

The IPP Office is currently undertaking a pilot project for independent transmission projects in line with the objectives of the Regulations. The IPP Office issued an RFI in December 2024 with the objection of attracting private sector’s involvement in the transmission sector. This RFI is intended as a market sounding exercise with the intention of releasing a pilot tender during 2025.

The Regulations set out certain factors which must form part of the considerations and outcomes of any such feasibility study, namely the –

1. anticipated costs of the transmission capacity or energy infrastructure project;
2. proposed allocation of key financial, technical and operation risks between the prospective buyers or users and the transmission service providers; and

3. material legal, financial and technical requirements, including consents that will be required in order to establish the transmission capacity or energy infrastructure project.

6. Cross-border transmission capacity

Certain determinations may require or contemplate that cross-border transmission capacity be established. In this event, –

1. the Minister must be satisfied that adequate agreements, memoranda of understanding or other arrangements are or will be in place between the South African Government and the relevant foreign government, utility or international organisation, to enable the establishment of the transmission capacity in question; and
2. the procurement process must be planned and conducted with due regard to such arrangements.

7. Energy infrastructure projects

Before making a multi-component determination in respect of an energy infrastructure project, the Minister must also be satisfied, based on a feasibility study, that it would be advantageous to the Government for the required new generation capacity, infrastructure and other matters to be combined into an energy infrastructure project.

In a multi-component determination, the Minister must specify the key components of the new generation capacity, the infrastructure and other matters (as defined above) that will be the subject of such energy infrastructure project.

8. Transmission Services Agreement (“TSA”)

Before the buyer or user enters into a TSA, the procurer must ensure that the TSA –

1. represents value for money;
2. transfers the appropriate technical, operation and financial risks to the transmission service provider;
3. contains effective mechanisms for the implementation, management, enforcement and monitoring of the TSA; and
4. allows for adequate due diligence by the buyer or user in relation to the transmission service provider’s competence and capacity to meet its obligations in terms of the TSA.

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

In order to do so, 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.

9. Cost recovery

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, the Regulations require NERSA to ensure that the buyer (or user) is able to recover, at least, the full amount of the costs they incurred in certain categories, namely –

1. capacity or availability payments or any other compensation mechanism provided for in the TSA, made for transmission capacity;
2. expropriation costs and reimbursement to the transmission services provider for the costs of acquisition of servitudes and similar rights;
3. any other payments made by the buyer (or user) in administering, managing and reporting in respect of a TSA;
4. the efficiently incurred costs of the buyer (or user) in administering, managing and reporting in respect of a TSA;
5. the costs of, and amounts paid by, the buyer (or user) arising from the termination of a TSA; and
6. all other costs efficiently incurred by the buyer (or user) in giving effect to a determination.

The buyer (or user) may request that NERSA issues a cost recovery assurance letter to them before entry into any TSA. NERSA must then respond within 30 days, confirming the categories of costs that will be recoverable through the transmitter's tariffs.

In this event, the buyer (or user) will, upon request, need to provide NERSA with any documentation that is reasonably required in order to finalise the letter.

Conclusion

The Regulations are a crucial development in unlocking the grid constraints that has hindered the advancement of renewable energy capacity in South Africa. The manner in which the Regulations intend to facilitate planning for the procurement and establishment of transmission capacity by private parties will allow for private sector involvement which has been successfully implement on the generation side over recent years. In addition, it is worth following the developments of the distribution infrastructure, particularly in the context of the Regulations coming into force in the future.

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