PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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English

Electricity Regulation Amendment Bill 2023 [B23-2023]

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Parliament of South Africa is currently seeking public inputs on the Electricity Regulation Amendment Bill (ERA). The Portfolio Committee on Mineral Resources and Energy of the National Assembly (NA), in accordance with section 59 (1) of the Constitution, is actively encouraging public involvement regarding this Bill. Interested stakeholders are invited to provide their valuable comments and inputs on the ERA Bill.

What is the purpose of the ERA Bill?

The ERA Bill seeks to amend the Electricity Regulation Act of 2006. The main purpose of the ERA Bill is to enable transformation of the electricity sector of South Africa and move from a monopoly driven market towards a competitive or open market through key legislative reforms.

The ERA Bill outlines the powers and role of the National Energy Regulator of South Africa (NERSA or the Regulator) for licensing electricity generation, transmission, distribution, and import and export that includes trade activities which can only take place with a license from the Regulator. The ERA Bill further introduces the powers, functions and duties of the Transmission System Operator Ltd which is intended to undertake the role that the National Transmission Company of South Africa SOC Ltd plays as an enabler of the competitive market.

The Department of Public Enterprise (DPE) Eskom Roadmap provides the framework for unbundling of Eskom which includes the establishment of the Transmission System Operator SOC Ltd (TSO);

Key Provisions of the Bill

1.National Energy Regulator of South Africa (NERSA) powers and duties

The ERA Bill:

- Confirms that the Regulator or NERSA is the body which oversees the licensing of electricity generation, transmission, distribution, and the import and export activities relating to the trading activities;
- Ensures that the Regulator has the power to issue, withdraw, suspend and revoke licenses including powers to monitor and place license conditions to ensure compliance;
- Extends the scope of licensable activities to include market operator and system operators participating in a competitive market;
- Removes the power for the Regulator to regulate prices but retains the power to set tariffs, and the power to issue rules focused on implementing the national government's electricity policy framework, and the Integrated Resource Plan (IRP 2019);
- Is amended to align with the transformation of the electricity market so as to ensure returns commensurate to the risk of the licensed activity. The new provisions of section 15(1A) and 15(1B) states that when tariffs are determined they must take into account planned projects that are reflected in the IRP 2019 and the Transmission Development Plan (TDP);
- Also introduces a dual or hybrid form of determinations, as the Regulator is empowered to set separate tariffs for each of the vertically integrated license activities that emanate from the monopoly market of Eskom;
- States that a license holder may not charge a customer any tariff other than the tariff set out and approved by the Regulator. However, as a competitive market is being introduced and license holders must be able to set competitive pricing without being bound to tariffs - the ERA Bill provides an exemption in this regard; and
- Permits a license holder to charge a tariff that has not been set or approved by the Regulator only where that tariff is charged pursuant to a direct supply agreement or is an outcome of a competitive market.

2. Conducive Environment for Competitive Electricity Trading

- The ERA Bill proposes a number of provisions that expand the scope of the Regulator thereby expanding the scope of licensable and/or registrable activities which must operate in a conducive competitive market and trade;

- Section 8 and 9 enables the Minister to exempt certain activities from obtaining a license, instead these activities can be undertaken provided that the activity is registered;

- This provision extends to import and export activities to enable a conducive environment for competition;

- This can only be done by the Minister in consultation with the Regulator, following a gazette specifying the activities to be exempt from licensing, and provided the activity meets the technical codes of registration with the Regulator; and

- The ERA Bill enables further exemptions that can be embedded as part of license conditions. Clause 7 amends section 7(1) to enable sub-contracting license exemption, to which a license holder may sub-contract to an entity to perform licenced functions without the sub-contracting party being a license holder. A license holder may also transfer a license to another party provided that the Regulator has issued written consent, this was previously prohibited in the Act.

3. Additional electricity, new generation capacity and electricity infrastructure

- Clause 27 of the ERA Bill provides extensive amendments to section 34 focused on setting the framework to which the Minister may make determinations for additional electricity and/or new electricity transmission infrastructure needed to ensure optimal supply of electricity. This provision expands the Minister's power to include additional electricity in determinations rather than determinations solely for new generation capacity.

- The ERA Bill states that the Minister's determinations must be made for the purposes of ensuring security of energy supply, in the event of market failure or in the event of an emergency and after consultation with the Regulator and the Minister of Finance. The determination must include;

  - The extent of new generation capacity required;
  - Types of energy sources or technologies from which the electricity may be generated and the amount from each source or technology;
  - Whether generators shall be independent power producers or an organ of state;
  - Whether the produced electricity or a portion of the electricity must be purchased by a person designated in the determination as the buyer;
  - Whether the electricity or portion may be sold to the buyer referred to above;
  - The procurement process for the acquisition of electricity; and
  - The extent to which new generation capacity may be established by independent power producers.

4. Transmission System Operator SOC Ltd

- The ERA Bill empowers the Minister of Public Enterprises to establish the TSO and assigns the entity with powers and functions; and

- The powers and functions of the TSO are extensive and listed in clause 28 and primarily indicates that the TSO will be a transmitter, system operator, market operator and central purchasing agency. The TSO will be 100% owned by Eskom as a subsidiary. The TSO will have its own Board of Directors and functions separately from the other business units under Eskom Holding.

5. Offenses and Penalties

- The ERA Bill makes it an offence liable of a fine of R1 million or imprisonment not exceeding 5 years for any person who damage or without lawful authority remove or destroy transmission, distribution or generation cable, equipment or infrastructure; and

- Wilful operations without a license or registration, making false statement or misleading the Regulator, obstructions to authorised personnel to inspect electricity supply facilities and suspected electricity supply facilities is an offence and therefore subject to the same penalty mentioned above.

6. Transitional Arrangements

- Transitional arrangement is the framework within which the TSO must be established, and the assignment of duties of the TSO to the National Transmission Company of South Africa SOC Ltd (NTCSA) until such time as the TSO is established;

- The ERA Bill provides a period of 5 years for the establishment of the TSO, and as of 2021 the NTCSA was established by the DPE as a wholly owned subsidiary of Eskom.

Why is it important for you to participate?

When laws are made, it is important that the people's voices are heard. Public participation means that everyone gets a chance to share their thoughts and ideas about the law.

Why is Parliament asking for your input?

Parliament is mandated by the Constitution to ensure that the public is involved in all its processes, including law-making. To satisfy this mandate, the Portfolio Committee on Mineral Resources and Energy is inviting all interested and affected parties to participate in the processing of Electricity Regulation Amendment Bill.

Who must participate and how?

All affected and interested parties, individuals and organised formations are invited to participate in the upcoming public hearings by making an oral submission to the Portfolio Committee on Mineral Resources and Energy.

A series of consultations were undertaken with industry and other key sector stakeholders, the general public and institutions at large in preparing the Bill.

What happens after you give your input to the committee?

The committee will consider all public inputs on the Electricity Regulation Amendment Bill for the National Assembly to pass it. The Bill will then be referred to the National Council of Provinces for further deliberation and concurrence. Thereafter, the Bill will be sent to the President for assent and signing into an Act of Parliament.

For copies of the Bill and any further information you can contact the secretary of the Portfolio Committee on Mineral Resources and Energy, Ms Ayanda Boss at:

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Or visit parliament's website at: www.parliament.gov.za

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