

13 October 2023

Mr. Arico Kotze
The Portfolio Committee on Mineral Resources and Energy
akotze@parliament.gov.za

Dear Mr. Kotze,

SAIPPA's comments to the proposed amendments to the Electricity Regulation Act, 2006

Thank you for the opportunity to comment on the proposed amendments to the Electricity Regulation Act, 2006. Please find attached the comments of SAIPPA (South African Independent Power Producers Association).

Here is an outline of the association, with further details here (<https://www.saippa.org.za/>):

Goals:

The goals of the Independent Power Producers Association of South Africa are to promote the collective interests of IPPs in South Africa, to assist with public policy formation and implementation, and to serve as a platform for information dissemination to its members. We seek to pro-actively engage with legislators, government officials, Eskom, and regulators as part of our initiatives to achieve energy security in South, as well as southern Africa.

Activities:

- Representing its members in various platforms including political institutions at Provincial, National and municipal levels,
- Informing its members on the latest policy legislative and regulatory developments,
- Lobbying key decision-makers on appropriate policies to develop a sustainable independent power production market,
- Mobilising the independent power production sector via working groups, seminars, and workshops to define clear positions on political, technical, and economic issues,
- Promoting all power technologies irrespective of type
- Organising seminars, conferences where topical issues on independent power production are discussed.

Please do not hesitate to contact us should you require any clarifications.

Please could you provide confirmation of receipt of our comments.

Regards,

AJ van der Merwe
Secretary General



BJ Day
Chairman

SAIPPA's comments to the proposed amendments to the Electricity Regulations Act

SAIPPA welcomes the proposed amendments to the Electricity Regulation Act (now various iterations since 2022) and sees it as an essential step regarding the unbundling of Eskom in line with DPE's roadmap and the creation of an energy market for South Africa.

Although we would have liked to see that legislation (the suggested regulatory amendments) follow a white paper or blueprint with clear goals and objectives for the industry's vision and end state and the required parts for the SOC (the NTCSA) being covered in separate pieces of legislation, we strongly support this process by government.

We see this as a crucial first step where detailed regulations will be required to provide substance to the legislation, but additional legislation will also be required before the 5-year interim timeframe expires.

In this regard, we believe that:

1. Not only should Eskom be unbundled to allow for the NTCSA, but the generation division should also operate fully independently after the 5yrs transitional period envisaged by the Bill, to ensure no dominance in market.
2. The vesting contracts (between CPA and Eskom Gx and Dx) should be clear and transparent in terms of their costing nature – the bill should be clearer in the intent of these, rather than leaving it to later Regulations under the Bill.
3. The market rules/code will be developed by the NTCSA – but all market players need to help to ensure transparency and adequacy how the market will function,
4. Clear and transparent unbundled Generation and Transmission/ market prices to be published for all market players (even in the transition period),
5. Pre-defined period for NTCSA to cut all links from Eskom Holdings for complete independence, preferably some reference embedded in legislation, or advance a future amendment bill (or other legislation) soon.
6. Include provisions for the eventuality that the 5-year interim period is insufficient, otherwise significant uncertainty could prevail at such a point.

We further note, and wish to emphasise, that the Bill in no way privatises Eskom! There remains a strong focus on a regulated market. Such a regulated market allows for private investment to expand generation (and transmission) capacity, while the grid and other natural monopolies are well regulated.

It is also important to emphasise the value of competition in generation to optimise prices in such a regulated market, while allowing for adequate protection of the poor and indigent households through various means.

As a final introductory comment SAIPPA has participated in the **ECSA/BUSA process**, and fully subscribes to their submission – in addition to our comments below.

SAIPPA have the following specific comments regarding the proposed amendments.

Definition Section:

- DEFINITION OF 'DIRECT SUPPLY AGREEMENT' - in agreement with the definition, such supply agreement should *go through the collective of the CPA / MO/ SO for determination of total market (capacity and energy) requirements.*
- DEFINITION OF 'REGULATED TRANSACTIONS' - this definition *is not complete and needs further wording* as retail customers of Eskom distribution and the 167 municipal licensees would have to be regulated during the transitional stage as well as after the transitional stage as full customer choice for unbundled tariffs would not be available yet.

Bill is also silent as to the criteria of customer choice or who the eligible customers will be.
Define criteria in the Bill.

Include in the definition of a regulated transaction *who decides when this is regulated or not (or provide much more clarity on what is a regulated transaction).*

- DEFINITION OF TRANSMISSION DEVELOPMENT PLAN (TDP) - the 2022 Amendments to the bill gave a definition of this, but the 2023 version- although using this - do not define this - *Reinstate the previous definition as in 2022.*

Clauses in the Bill:

- SECTION 4 – POWERS AND DUTIES OF THE REGULATOR- **Section 4(1)(b)(i)** states that the Regulator may *mediate and or arbitrate... we believe that the regulator should be allowed to mediate but NOT play a role in arbitration that have any reference regarding any regulatory aspects of the market transactions. Delete such reference.*
- SECTION 9 – APPLICATION FOR LICENCE -Section 10(2)(g) states that an application for a license must include evidence of compliance with any integrated resource plan... it was removed in the 2022 version but included now in 2023.
 - This is applicable to the **public procurement** process/programme, but **not** to what is envisaged under Schedule 2. *Clearly define that this is not required for private sector projects.* If not clearly excluded - it appears that sales to municipalities and SOEs would need ministerial consent and would hamstring the intent of this legislation i.e. the creation of a (regulated) market.
- SECTION 14 – CONDITIONS OF LICENCE- **Section 14(1)(g)** states that the Regulator may make any license, subject to conditions relating to the *regulation of the revenues of licensees*. This in fact allows NERSA to regulate direct agreements as well as bilateral agreements between market players. NERSA's powers to make conditions to licenses should be limited to exclude these envisaged market transactions as this would defeat the original purpose of the competitive market, besides conforming to transparency and adhering to the market rules/ grid code to keep the market stable and sustainable.
 - The deletion of the section of license condition - setting powers that licensee must comply to *"regulations, codes or rules"* cannot be. It is of the essence that a licensee needs to adhere to certain base requirements like grid code and the envisaged market code. *Reinstate.*
- SECTION 21 – POWERS AND DUTIES OF LICENSEE - **Sections 21(1A) and (1B)** were included in the 2022 Amendment Bill and have not been included in the 2023 Amendment Bill. *We do regard these duties as important for clarity – reinstate into 2023 version.*

- SECTION 34 – ADDITIONAL ELECTRICITY, NEW GENERATION CAPACITY AND ELECTRICITY TRANSMISSION INFRASTRUCTURE – The role and functions of the Transmission System Operator (TSO) were clearly delineated in 2022 Amendments. Suggest that these be put back for clarity's sake and for market players to understand the responsibilities of the TSO. TSO's around the world typically have these functions as part of their value chains.
- SECTION 34 – ADDITIONAL ELECTRICITY, NEW GENERATION CAPACITY AND ELECTRICITY TRANSMISSION INFRASTRUCTURE (cont.)
 - **Vesting contracts: Section 34B(5)(c)(ii) defines vesting contracts** or the ability to hedge during the transition period. If this hedging guarantees Eskom Generation and Eskom Distribution undefined support for revenues via prices for guaranteed off-takers, but the private sector not – it defeats the object of the competitive market. It is also unclear about vesting rights to municipalities during the transition if the market is a mandatory centralised dispatch market. Regulatory approval – especially during the transitional stage – is essential for market balance and sustainability. Recommend inserting such stipulations regarding the vesting contracts, their nature, intent, and duration. (preferably a market model should have underpinned this).
- SECTION 34 – ADDITIONAL ELECTRICITY, NEW GENERATION CAPACITY AND ELECTRICITY TRANSMISSION INFRASTRUCTURE (cont.)
 - **Section 34B(5)** refers to a CPA (one or more bodies?). If multiple CPAs are envisaged, this should be detailed in the Bill – which could be possible for the various types of contracts/obligations. If a singular CPA is envisaged, it should be called “the” CPA.
 - **Section 34B(5)** What happens after the transitional period w.r.t. its role 1) regarding the S34 legacy contracts and 2) if a hedging structure for non – compliant market players cannot be found or 3) if the market is not mature enough to continue and more time may be necessary? Include some transitional measures to deal with these circumstances.
- SECTION 36 – REGULATIONS, RULES, GUIDELINES, DIRECTIVES AND CODES OF CONDUCT AND PRACTICE
 - **Section 35(3A)** states ‘The Regulator must, after consultation with the Minister..... The Minister should not be playing a role here, as this is not a policy matter but a technical matter. Delete this reference.

General:

- Third party access defined in section 20 of the bill is the core to the establishment of the market and market transaction. We believe an extensive definition of this is warranted with references in both license stipulation, the envisage market code and grid coded. We recommend that such enhancements of the definitions be added.
- The Bill in our opinion lacks a dedicated monitoring and compliance chapter. For instance, how and under what circumstances will/must the regulator intervene in the market or react on non-compliance of licensees? Various examples around the world exist where the regulator had to intervene to both protect the market stability as well as protect end customers. Further, where licensees or future market players do not meet license requirements/market code the regulator needs to step in. We do not have examples of such actions by NERSA, nor of any compliance standards laid down that regulated evidence exist for. Pro-active vs retroactive regulation, compliance monitoring etc. is common in most regulatory stipulations around the world. We strongly recommend such a chapter to be added.
- The bill ignores regional opportunities such as the SAPP. We do understand that the TSO will have an international trading section/ division but much more enablement needs to be added to ensure that this can be incorporated into the envisaged market regime. We recommend some detail enabling provisions in this regard to be added.

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