The South African Independent
Power Producers Association
4 Karen Street
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24 May, 2019

National Energy Regulator of South Africa

526 Madiba St

Arcadia

Gauteng, 2019

Att: Mr Tamai Hore

Email: Tamai.Hore@nersa.org.za

Dear Sir:

SAIPPA's RESPONSE TO DRAFT LICENSING EXEMPTION AND REGISTRATION NOTICE

Thanks

We thank you for the opportunity to provide input into the consultations on the "Consultation Paper on the Draft Licensing and Exemption and Registration Notice" issued for public comment in May 2019.

SAIPPA

The goals of the Independent Power Producers Association of South Africa are to promote the collective interests of IPP's 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 broad industry reform resulting in competitively priced, reliable and readily available electricity in a regulatory environment that is transparent, certain and IPP friendly.

SAIPPA Membership

SAIPPA currently has 54 paying members that include large and small companies in the paper, chemical, food, cement and energy industries. Some of these companies in turn are the dominant players in their industries, and have some of the larger IPP generation assets in their portfolios. In addition, our membership includes service providers, consultants, energy lawyers, academics and project funding institutions.

GENERAL ISSUES:

There are a number of general and specific issues not well covered in the stakeholder comment questions so in response to the invitation to comment on the broader Draft Notice, the following is offered:

Responsibilities for Public Consultation: This public consultation has been initiated by NERSA in their role of concurring with DOE's intentions. Given the large impact this draft notice will have if gazetted in its current form, the NERSA objectives of "...the efficient, effective, sustainable and orderly development..." of the ESI in SA will not be achieved. The proposals are disruptive, counter-productive to some industries and should be presented by the drafters (DOE) to motivate and explain what they propose.

Threshold for Exemption from Licensing: We repeat previous submissions to NERSA on this issue. There is nothing to be gained in trying to over regulate small generators – the burden of red tape to the generator, and the burden of administration on the Regulator are too large for the benefits. A threshold of 5 MW, preferably 10 MW is recommended for the following reasons:

* Public procurement (Eskom and DOE-IPPP) generally have a 5 MW lower limit. This leaves a dead band where significant potential exists.

* Given the provision in the ERA that NERSA may only consider a generation license if the technology and MW are contained in the current IRP, it means that the IRP will have to address this level of generation output. The current IRP2010 ignores this generation completely, and the draft IRP2018 provides for only 200MW – far too small to satisfy the generation opportunities.

* Minister Radebe has recently advised NERSA that all generation applications up to 10 MW have his consent to deviate from IRP2010. This sets an important precedent and his lead should be taken. This could be in the form of the Draft Notice exempting the requirement for a Ministerial Deviation in the 5 to 10 MW range, so allowing NERSA to consider license applications on their merits alone.

Own Use. The Schedule II provisions for exemption for Own-Use generation seem now to be removed. It is presumed to be an unintended consequence of the Draft Notice and comes about through the application of the definitions of "End-use customer" namely that a Customer cannot be oneself. This is a serious issue, and if allowed to proceed into law, will make it impossible for the next sugar mill, pulp and paper complex or other co-generator to obtain a license, as its size and impact would not have been allowed for in the IRP.

Co-generation Definition. Section 3.3 of the Draft Notice is a sharp reversal from what has gone before and what has been achieved in the start to realise the potential of over 6500MW of cogeneration in SA (refer GIZ study in 2017 on the subject). Co-generation is not a defined term (see our comment below) and to reduce it to just "...electricity production from waste or the residual product of an underlying industrial process..." excludes large sections of what is considered to be co-generation in SA. These include:

- combined heat and power where a fuel (fossil or renewable) is used to co-produce electricity and heat.
- non-industrial applications – agricultural waste, biomass plants that are not linked to industries, biogas, building heating and cooling in commercial centers, hospitals etc.

Co-generation Sizing. The sizing of a co-generation plant needs to be dictated by either the fuel resource or the underlying process, and not by the circumstances of the "..end use customer who is related to the generator or owner..." (3.3.1). For example, it would make it impossible for a community or privately-owned sawmill to establish a biomass plant for the supply of power to a local town or industrial area, as this provision would preclude such an arrangement.

The biogas industry is similarly hamstrung where the owner of the feed stock, typically a farmer, does not have sufficient load for Own-use and does not have a Related End-use customer.

SAIPPA'S COMMENTS TO SPECIFIC QUESTIONS

#1: Whether the individual definitions appropriately define etc:

General Comments:

* it is important to place these definitions in context with other definitions that are relevant specifically in the ERA, IRP, Companies Act, Grid Codes etc.

* it is important to keep to the discipline of identifying the use of a defined term in the main text through an upper case 1st letter. An example is 3.1.2 where "end-use customer", "related customer" and "wheeling" are not identified as being defined terms.

Specific Definitions:

Co-generation – include a definition and use it in 3.3. Make the definition inclusive of waste, residual products and combined heat and power, exclude any reference to industrial processes and generally as per NERSA's COFIT definitions of 19 January 2011 contained in "Co-generation Regulatory Rules…."

Capacity – exclude "AC" as it could be AC or DC.

Capacity – exclude "a Unit" as a license or an exemption is for a Facility and not just a unit.

Capacity – include "kW" as kW is used in 2.2.2.

Connection agreement – this definition is only used in the definition of Wheeling and needs review once the definition of Wheeling is finalised.

Customer – the definition needs to include generation as a service provision.

Customer - this definition includes the aspect of an agreement between supplier and Customer. Is the load, in an own-use situation, still a Customer? (refer 3.1.1) If not, then own-use is not provided for in these regulations.

Embedded/Distributed Generator, and SSEG – pick the most appropriate term and ensure compatibility with all legal use of the same term, including in IRP.

Embedded/Distributed Generator – this definition is not used in the regulations and could be omitted.

End-use customer – delete "...connected to a distribution system." Own-use and off-grid customers may not be connected to a distribution system.

Site – delete "..to be..." as these regulations also cover existing sites.

Wheeling – the current definition is not comprehensive and the following is suggested: **Wheeling** means the conveying of electricity by a Generator, Distributor, Transmitter or Trader from a source to a load using the Transmission and/or Distribution network in terms of connection and reconciliation agreements.

#2: Should Mini-grids not be registered or licensed?

There is no definition for "mini-grids" but with no Point of Connection, all off-grid systems should remain exempt from regulation. Over charging by a distributor or reseller could be a problem that needs regulation, but this is a separate issue.

#3: Should Related Customers be separately provided for?

3.1.1 provides for license exemption when supplying an end-use customer (= a user of electricity connected to the distribution system). The location is not restricted thus the need to wheel, as contained in 3.1.2, is superfluous.

"Related Customer" should be removed from 3.1.2 if it is to be retained. Wheeling then becomes a use of networks issue and not a generator licensing issue and so falls outside the scope of these regulations.

3.1.2 is incomplete as it ends in "and…."

#4: 36 Months limit for demonstration plants?

A calendar period is the only practical solution. There are some demonstration and research plants that could be permanent facilities. These can be accommodated by 36-month renewal of the registration.

#5: Maximum threshold for waste and residual product?

No limit should be imposed. For any waste or residual product facility the plant must be designed to the size of the fuel resource, and for a combined heat and power facility the sizing must be dictated by the related process. Any artificial limits on output would introduce inefficiencies.

The treatment of co-generation cannot be restricted from what is provided for in the November 2017 regulations, and must include a comprehensive definition of Co-generation, as argued above.

#6: Prior operations require registration?

Yes, registration should be required should the existing plant, if it were new, require registration or licensing. It is important to note the distinction of "...or licensing." as it would be untenable to expect an existing plant, exempt from licensing in previous regulations to be faced with licensing and possible refusal of that license.

#7: Regulation of resellers charging higher prices than approved tariffs?

There are a number of aspects to this issue:

* reseller have costs of administration, maintenance and losses that have to be recovered.

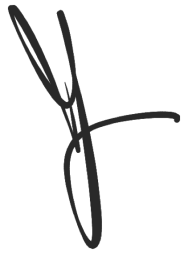
* regulation is required as a landlord, having a captive market could charge non-reflective cost charges, could cross subsidies or unfairly enhance profits.

* the above said, municipalities are cross-subsidising from electricity sales and some are unreasonable.

These are important issues that need resolution but the drafted provisions, in our view, are inadequate.

Acknowledgment: Our member's contribution is acknowledged and valued.

Yours faithfully



T. Garner

SAIPPA Chairman 24 May 2019