



NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Land Reform,
Environment, Mineral Resources and Energy

Hon. TC Modise

NAME OF BILL: Electricity Regulation Amendment Bill

NUMBER OF BILL: [B23B-2023]

DATE OF DELIBERATION: 26 April 2024

VOTE OF THE LEGISLATURE: The Gauteng Provincial Legislature is supporting the Electricity Regulation Amendment Bill subject to the amendment below being considered.

Definitions

Definition of Direct Supply Agreement': Although the 2022 and 2023 Amendment Bills introduce a definition of 'direct supply agreement' The definition excludes generators, traders, and the system operator as customers. The proviso to the definition must include generators and traders.

Definition of Integrated Resource Plan (IRP): the current definition of the integrated resource plan no longer suits the prevailing circumstances, the 2023 Bill states that an IRP is "an indicative, forward-looking plan for electricity generation, which reflects national policy on electricity planning, which plan specifies the types of energy sources and technologies from which electricity may be generated and indicates the amount of

electricity that is to be generated from each of such sources or technologies”. Suggests that the definition of an IRP be “an indicative, forward-looking plan for electricity generation, which reflects national policy on electricity planning and specifies the amount of electricity that needs to be generated in a given period of time”.

Definition of physical bilateral transaction: submits that the word ‘physical’ seems misleading in the context of the system operator balancing demand and supply and should be deleted. It is therefore proposed that the wording should rather be ‘national bilateral transaction’ or ‘public bilateral transaction’ because it has to do with national interests of balancing the grid. The definition should refer to the CPA, not a CPA. scenario in which the CPA procures electricity to balance demand and supply.

Definition of regulated transaction: The 2022 and 2023 Amendment Bills introduce a definition of ‘regulated transactions’ as “transaction that requires regulatory approval or oversight, specifically where the exercise of market power is likely or evident (for example network charges)”. It was submitted that the definition is misleading because it could include *any* project that needs to be registered. ‘Unregulated’ means private and bilateral, and ‘regulated’ means with a regulated entity like the central purchasing agency. This must be clarified.

Section 4: Powers and duties of Regulator

Section 4(1)(b)(i) states that the Regulator may mediate and or arbitrate disputes between generators, transmitters, distributors, traders, Transmission System Operator SOC Ltd, and any other licensee or customer, customers, or end users. Propose that private bilateral transactions be excluded, to limit NERSA's role in willing buyer and willing seller scenarios. It is further proposed that there must be a definition of ‘private bilateral transactions’ or use the term ‘market transaction.’ The Bill should also be clear when it comes to exports and imports of electricity on a long-term basis are different than exports or imports of electricity in competitive markets (whether national or regional). Whilst export or import on a bilateral basis might require additional approvals - the export/import on national and regional competitive markets (i.e. trading) should fall under a trading licence. This would align with the recent legislative changes in many other countries across Southern Africa.

Section 9(1A)

The 2022 Amendment Bill includes section 9(1A), which is not included in the 2023 Amendment Bill. Section 9(1A) states that any person who operates a generation facility contemplated in item 2 of Schedule 2 must register that facility with the Regulator in terms of this section. Section 9(1A) and Schedule 2 item 2 are duplicates. Section 9(1A) should remain in the Amendment Bill, because it entrenches the need to register generation facilities, as opposed to licensing them. Propose that the fees in section 9(4)(e) should be approved by the Regulator.

Section 10(2)(g)

- Propose that defined terms (for example, 'transmission power system' and 'distribution power system') should be used throughout this section.
- Section 10(2)(g) states that an application for a licence must include evidence of compliance with any integrated resource plan applicable at that point in time or provide reasons for any deviation for the approval of the Minister.
- This section is in the ERA, it was removed in the 2022 Amendment Bill and has been reinstated in the 2023 Amendment Bill. This section should be deleted, as it was in the 2022 Amendment Bill. Evidence of compliance with the integrated resource plan may be a sticking point with NERSA in the licensing process.
- Historically NERSA has automatically deemed private sales of power to be non-compliant with the IRP, and Ministerial consent to deviation has been almost impossible to obtain in practice.
- It should be made clear that this applies to public procurement programmes. Private projects used to require ministerial deviations under this section so it is desirable that this section should not apply to private projects. This remains an issue because of NERSA's interpretation of this section: sales to municipalities and SOEs would need ministerial consent.

Section 14(1)(g) Conditions of licence

Section 14(1)(g) provides that the Regulator may make any licence subject to conditions relating to the regulation of the revenues of licensees. This is a

discretionary power that may be exercised on a case-by-case basis and exercised through a license condition. This is not a general power applicable to all licensees. NERSA should have the flexibility to exercise its own regulatory oversight.

Sections 21(1A) and (1B) 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. The sections stated:

- (1A) A generation licensee shall be entitled to sell the electricity produced by the generation facility to which its licence relates without holding a trading licence; and
- (1B) The operator of a generation facility contemplated in items 2 and 3 of Schedule 2, other than a facility for own use, shall be entitled to sell the electricity produced by such facility without holding a trading licence.

Propose that these sections should be re-instated. It is useful for a generator to not also have to apply for a trading licence. This would reduce red tape. It is further submitted that the word "network" should be defined.

Section 34(1) Additional electricity, generation capacity and Electricity transmission infrastructure

Section 34(1) of the 2023 Amendment Bill states that "the Minister may, in the event of the failure of a market, or in the event of an emergency, or for the purposes of ensuring security of energy supply in the national interest, after consultation with the Regulator and the Minister of Finance, by notice in the Gazette, make a determination (emphasis added)."

- In the ERA, section 46(1) states that the Minister may make a determination "in consultation with the Regulator."
- The use of "in" as opposed to "after" consultation with the Regulator meant that NERSA's concurrence was essential to determinations under this section.

- It is proposed that that "in", not "after" be used in order to ensure that the appropriate oversight is exercised by NERSA.

Section 34(B)(3)(c)(i)

Request that there should be clarification regarding the meaning and scope of this provision.

Section 31 Functions of TSO-The role of the Transmission System Operator (TSO)

The 2022 and 2023 Amendment Bills propose the establishment of the TSO, which will manage the competitive multi-market. The TSO will be responsible for transmission planning, operation and control of the transmission system and market. The role of the TSO is highly relevant and important for future electricity supply and regulation. Although the establishment of the TSO remains the same in both Amendment Bills, the functions of the TSO differ. The functions of the TSO under the 2023 Amendment Bill are less clearly delineated.

- Multiple functions (transmission expansion plan, forecasting, dispatch schedules) that were included under the role of the TSO in the 2022 Amendment Bill do not appear in the 2023 Amendment Bill.
- Clarity as to why functions of the TSO have not been retained in the 2023 Amendment Bill, is sought. regarding (i) the intention behind these deletions; and (ii) who will be responsible for performing the removed functions.

The Integrated Resource Plan (IRP)

Section 34(A)(1) of the 2022 Amendment Bill expressly stated that the Minister is responsible for (i) compiling the IRP and (ii) revising the IRP every three years, or more frequently if necessary, and providing clear substantive and procedural guidelines for the development of the IRP. These provisions were helpful in clarifying the role, composition, and implementation of the IRP, so it is therefore unclear why the amendments have not been retained in the 2023 Amendment Bill. Submit that Minister's responsibility to develop the IRP, we note that in terms of the New Capacity Generation Regulations (Government Gazette no. 32578). The deletion of the requirement to revise the IRP every three years removes an important mechanism that

encourages Ministerial accountability. Thus, the Bill must refer to a time applicable for the update of the IRP on a regular and defined basis.

Deletion of section 34(2) in the 2023 Amendment Bill

The 2022 Amendment Bill gave the Minister a number of powers and functions under section 34(2)(a)-(e). It is unclear why these sections have been deleted in the 2023 Amendment Bill and where are these powers catered for under the 2023 Amendment Bill.

Section 34(1)(b)- Transmission infrastructure

Propose that the powers and functions of the Minister in relation to electricity transmission infrastructure be transferred to the National Transmission Company South Africa SOC Ltd as the entity best placed to perform these functions.

Section 34(1)(e) Fair and equitable tendering process

Section 34(1)(e) of the ERA states that the Minister may, in consultation with the Regulator 'require that new generation capacity must be established through a tendering procedure which is fair, equitable, transparent, competitive and cost-effective.' This provision has been deleted in the Amendment Bill. It is important that any tendering procedure for the procurement of electricity, new generation capacity or infrastructure is established through a fair, equitable, transparent, competitive and cost-effective process, suggests that this section be reinstated.

General Amendments

- Changes in electricity regulation should not inadvertently disadvantage townships or discriminate against certain areas in terms of access to reliable and affordable electricity. Safeguards are necessary to ensure equitable distribution of benefits from any competitive electricity market that emerges because of the Bill.
- Enterprise support initiatives, including provisions for funding allocation, eligibility criteria for SMMEs and accountability mechanisms for the administration of funds. Legal considerations could involve assessing the

impact of the electricity market reforms on SMMEs in Gauteng and ensuring that regulatory changes do not unduly burden or disadvantage these enterprises. Legal protections for SMMEs, such as safeguard against unfair practices by electricity providers, might also be relevant.

- Noting Mediation and Dispute Resolution mechanisms in the Bill, regulations governing dispute resolution and penalties procedures for violations by electricity providers to ensure that consumers are adequately protected in the context of a transitioning electricity market. This might involve strengthening consumer rights in electricity contracts, establishing mechanisms for resolving disputes related to electricity services, and imposing penalties for offenses such as electricity theft and vandalism. Additionally, legal safeguards might be necessary to prevent anti-competitive behaviour or abuse of market power by electricity providers in a more open and competitive market environment.
- In respect of dispute resolutions, it is noted that the amendment allows for mediation and arbitration, we deem it prudent that a Tribunal be established to deal with disputes, post the mediation and or arbitration process.

MMFIKOE

Date: 26 April 2024

HON. M MFIKOE

CHAIRPERSON: OF THE PORTFOLIO COMMITTEE ON ECONOMIC
DEVELOPMENT

GAUTENG PROVINCIAL LEGISLATURE