

Enquiries: Mbulelo Ncetezo
Tel : 012 4014617
Fax : 012 4014700
Email : mbulelo.ncetezo@nersa.org.za
Ref : Nersa 310-4 Comments on ISMO Bill

Honourable S.J Njikelana
Chairperson: Parliamentary
Portfolio Committee on Energy
Parliament of Republic of South Africa,
PO Box X5
Cape Town
8000

Per Email: akotze@parliament.co.za

Dear Honourable Njikelana

ENERGY REGULATOR'S SUBMISSION ON THE INDEPENDENT SYSTEM AND MARKET OPERATOR BILL

The National Energy Regulator of South Africa (NERSA) acknowledges receipt of an invitation by the Portfolio Committee on Energy (PCE) to comment on the Independent System and Market Operator Bill (ISMO Bill).

NERSA values the opportunity provided by the PCE to comment on the ISMO Bill.

Please find attached NERSA's detailed comments, per section of the Bill; and we trust that these will receive your favourable consideration.

Yours sincerely



Phindile Nzimande
Chief Executive Officer

Date: 16/04/2012

**COMMENTS ON THE INDEPENDENT SYSTEM AND MARKET OPERATOR BILL FOR
SUBMISSION TO THE PORTFOLIO COMMITTEE ON ENERGY**

| Comment No. | Chapter & Section in the Bill | Subject | Comments/Issues |
|-------------|-------------------------------|---------------------------------------|--|
| | Chapter 1 | DEFINITIONS AND OBJECTS OF ACT | |
| 1. | 1 | Add the word 'dispatching' | <p>It is proposed that this definition be added in the definitions section of the ISMO Bill and that it be aligned with the one contained in the Electricity Regulation Act.</p> <p>i.e. 'dispatching' means 'dispatching' as defined in section in Chapter 1 of the Electricity Regulation Act</p> |

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| 2. | 1 | Distribution power system | <p>It is suggested that this definition be aligned with the one contained in the Electricity Regulation Act.</p> <p>i.e. 'distribution power system' means 'distribution power system' as defined in section in Chapter 1 of the Electricity Regulation Act</p> |
| 3. | 1 | Add the words 'family member' | <p>It is proposed that this definition be added in the definitions section of the ISMO Bill and ensure that its in alignment with the one contained in the National Energy Regulator Act.</p> <p>i.e. 'family member' means a parent, child or spouse of a person, and includes a partner living with that person as if they were married to each other</p> |

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| 4 | 1 | Integrated power system | <p>It is proposed that this definition be introduced in the Electricity Regulation Act and be referenced in the ISMO Bill.</p> <p>e.g. 'integrated power system' means 'integrated power system as defined in section in Chapter 1 of the Electricity Regulation Act</p> |
| 5 | 1 | Add the word 'tariff' | <p>It is proposed that this definition be added in the definitions section of the ISMO Bill and ensure that it is aligned with the one contained in the Electricity Regulation Act.</p> <p>i.e. 'tariff' means 'tariff' as defined in section in Chapter 1 of the Electricity Regulation Act</p> |

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| 6 | 1 | Transmission power system | <p>It is proposed that this definition be aligned with the one contained in the Electricity Regulation Act.</p> <p>i.e. 'transmission power system' means 'transmission power system' as defined in section in Chapter 1 of the Electricity Regulation Act</p> |
| | Chapter 2 | ESTABLISHMENT OF ISMO | |
| 7 | Add 4.2(u) | In relation to system operation and expansion, ISMO must | <p>It is proposed that the following responsibility is added:</p> <p>(u) order the interruption of supply to preserve system integrity in times of power shortages</p> |

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| 8 | 4.3(d)(i) | <p>As a market operator, ISMO must procure electricity on such terms and conditions as may be agreed upon by the parties—</p> <p>(i) from generation licensees within the Republic and outside its borders, with the exception of generation licensees exempted by licence from selling to ISMO in terms of the Electricity Regulation Act; and</p> | <p>It is proposed that '<i>electricity generators</i>' be added in the sentence,</p> <p>i.e. procure electricity on such terms and conditions as may be agreed upon by the parties—</p> <p>(i) from generation licensees within the Republic and electricity generators outside its borders, with the exception of generation licensees exempted by licence from selling to ISMO in terms of the Electricity Regulation Act; and</p> |
| | Chapter 3 | MANAGEMENT OF ISMO | |
| 9 | Section 17(2) | Procedures at meetings | <p>It is suggested that '<i>voting</i>' be added. Therefore, the sentence should read:</p> <p>17(2) Seventy percent of serving voting members constitutes a quorum at any meeting of the Board.</p> |

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| 10 | Section 18(1) | Committees of Board | It is proposed that ' <i>concurrence of the Minister</i> ' be removed because this may have unintended consequences e.g. delays in the implementation of decisions. |
| 11 | Add (d) in Section 18 (1) | Committees of Board | It is proposed that the drafters consider a ' <i>Risk Committee</i> ' is also added as one of the committees that the board should appoint. i.e. (d) Risk Committee |
| 12 | Section 19(1) | Delegation of functions by Board | It is recommended that ' <i>servicing voting</i> ' be added. Therefore, the sentence should read: 19. (1) The Board may, by resolution passed by seventy-five per cent of its servicing voting members-. |
| | Chapter 4 | ISMO STAFF | |

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| 13 | Section 20 (2) | Appointment of chief executive officer and chief financial officer | <p>It is proposed that at the end of the sentence, the following is added '<i>and consider the applications received.</i>'</p> <p>Therefore the sentence should read:</p> <p>The Board must invite applications for the posts of chief executive officer and chief financial officer by publishing advertisements in the media and consider the applications received.</p> |
| 14 | Section 21(1) | Conditions of appointment of chief executive officer or chief financial officer | <p>It is recommended that '<i>Board</i>' be added. Therefore, the sentence should read:</p> <p>21. (1)The appointment of the chief executive officer and chief financial officer is subject to the conclusion of an annual performance agreement with ISMO Board.</p> |
| | Chapter 5 | FUNDING AND FINANCIAL ACCOUNTABILITY | |

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| 15 | Section 32(2) | <p>ISMO tariffs, fees and charges</p> <p>(2) In the event that ISMO Customer does not pay any tariff or service charge due, and notwithstanding ISMO's remedies in law, ISMO may, notwithstanding any provision in any law to the contrary, refuse to provide part or all of any services to such customer until all outstanding arrears, including administration fees, collection costs and legal fees, have been paid by such customer.</p> | <p>The Electricity Regulation Act currently has no provision for termination of service to the end user. Therefore this section must be rephrased and be aligned with the condition in the Electricity Regulation Act for disconnection and termination of service.</p> <p>See subsection 21(5) of the ERA; it is as follows:</p> <p><i>(5) A licensee may not reduce or terminate the supply of electricity to a customer, unless-</i></p> <p><i>(a) the customer is insolvent;</i></p> <p><i>(b) the customer has failed to honour, or refuses to enter into, an agreement for the supply of electricity; or</i></p> <p><i>(c) the customer has contravened the payment conditions of that licensee.</i></p> |
| | Chapter 6 | GENERAL PROVISIONS | |

**Section
35(4)**

Powers of entry and
inspection

ISMO must, before
disconnecting a person in
terms of subsection (3),
notify the property owner or
legal occupant of the
premises in writing of the
intention to disconnect the
electricity supply

The Electricity Regulation Act
currently has no provision for
termination of service to the
end user. Therefore this section
must be rephrased and be
aligned with the condition in
Electricity Regulation Act for
disconnection and termination
of service.

Proposal to align with
subsection 21(5) of the ERA
and it is as follows:

*(5) A licensee may not reduce
or terminate the supply of
electricity to a customer,
unless-*

*(a) the customer is insolvent;
(b) the customer has failed to
honour, or refuses to enter
into, an agreement for the
supply of electricity; or*

*(c) the customer has
contravened the payment
conditions of that licensee*

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| 17 | <p>Section 38 (1) (f)</p> | <p>Offences and penalties</p> | <p>It is recommended that 'authorised' be added. Therefore, the sentence should read:</p> <p>38. (1) (f) refuses to grant authorised ISMO access to land or property for electricity related inspection; or</p> |
| 18 | <p>Section 38 (2)</p> | <p>Offences and penalties:</p> <p><i>Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment</i></p> | <p>It is proposed that this provision should be phrased along the lines of the condition in Electricity Regulation Act section 18 under 'Contraventions of licence':</p> <p>Section 38 (2) may read:</p> <p><i>If any person found to be contravening subsection (1) an imposed penalty of 10 per cent of the annual turnover of the licensee or R2 000 000,00 (whichever is the higher amount) per day commencing on the day of receipt of the notice contemplated in subsection.</i></p> |

Acknowledgement of receipt

I hereby acknowledge receipt of Energy Regulator's submission on the ISMO Bill.

Name and Surname:.....

Position:.....

Signature:.....

Date :.....