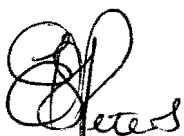


DEPARTMENT OF ENERGY**No. R. 401****25 May 2012****ELECTRICITY REGULATION ACT, 2006****DETERMINATION REGARDING THE OPEN CYCLE GAS TURBINE IPP PEAKING POWER PROJECT**

I, Dipuo Peters, Minister of Energy, in concurrence with the Regulator, hereby approve the Determination for the OCGT IPP Peaking Power Project as per the requirement of section 34 of the Electricity Regulation Act (Act No. 4 of 2006). The Determination is detailed in **Schedule A** in line with IRP1 (Gazette No. 32898, dated 29 January 2010).

In summary, I hereby determine in accordance with section 34 of the Act, as follows, -

- (1) new generation capacity is needed to ensure the continued uninterrupted supply of electricity;
- (2) the energy sources from which electricity will be generated, will be from the two new peaking power generation facilities to be developed and operated by GDF Suez Consortium, led by GDF Suez Energy International, as part of the Project ("Electricity Generation Facilities");
- (3) the electricity thus produced from the Electricity Generation Facilities may only be sold to Eskom; and
- (4) Eskom shall purchase the available capacity and electricity as generated and delivered by the Electricity Generation Facilities in terms of agreements to be concluded with the sellers thereunder as incorporated by GDF Suez Energy International.


Ms Dipuo Peters, MP**MINISTER OF ENERGY**

DATE: 08/05/2012

SCHEDULE A**DETERMINATION – OPEN CYCLE GAS TURBINE IPP PEAKING POWER PROJECT****1. Background to the Determination****1.1. It is my understanding that, –**

1.1.1. a determination was made by my predecessor (Minister Buyelwa Sonjica, the then Minister of Minerals and Energy (“DME”)) in respect of matters referred to in section 43 (previously 46) of the Electricity Regulation Act 2006 (“the Act”) and has determined, amongst other things, that (i) a new peaking generation capacity is needed to ensure the continued uninterrupted supply of electricity (ii) the energy sources from which electricity will be generated, will be from new power generation facilities operated by fuel oil fired open-cycle gas turbines (“OCGT”) to be developed and operated by an independent power producer, (iii) the energy generated will be sold to Eskom and (iv) Eskom shall be the sole purchaser and must purchase such electricity as generated and supplied by the independent power producer, in terms of agreements to be negotiated and concluded with the successful bidder to be appointed as independent power producer for such electricity and (v) the new generation capacity must be established through a tendering procedure as contemplated in section 34(1)(e) of the Act, carried out by the then DME, involving private sector participation through the procurement of an independent power producer;

1.1.2. the then DME initiated and proceeded with an OCGT IPP Peaking Power Generation project (“Project”), pursuant to the above determination. After having implemented a tender procedure which was a competitive bidding process and not reaching financial close with the initial preferred bidder, the DME decided in terms of Treasury Regulation 16A6.4 to enter into negotiations with one Suez being the only other bidder in the process for reasons as motivated at the time by the DME and published in the Government Gazette No 31852 Of 30 January 2009. The Project consists of the development, financing, procurement, construction, ownership, insurance, operation and

maintenance of two new generation facilities with a combined installed capacity of approximately 1000MW. One generation facility will be located in the Industrial Development Zone of Coega, in the Province of the Eastern Cape, and the other plant will be located near Shakaskraal in the Province of KwaZulu-Natal.

2. Considerations Relevant to the Determination

2.1. I have,

- 2.1.1. considered the above determination and background referred to in paragraph 1 above;
- 2.1.2. discussed the Project and process to date with the officials from the Department of Energy who have been involved in the Project;
- 2.1.3. considered NERSA's involvement in the Project to date;
- 2.1.4. consulted with NERSA regarding the Project and my determination set out below;
- 2.1.5. considered the decision taken by DME (at the time) following the withdrawal of the preferred bidder in 2008 to negotiate directly with GDF Suez (who were the only other pre-qualified bidder to have submitted a bid at the time), which decision was based on the provision of Treasury Regulations 16A6.4 (regulations made in terms of the Public Finance Management Act, 1999 ("the PFMA")); and
- 2.1.6. considered the participation by the National Treasury and Eskom in the DME's negotiations with GDF Suez and its lenders.

3. Determination

I now determine in accordance with section 34 of the Act, as follows, -

3.1. It is further my determination that, -

- 3.1.1. new generation capacity is needed to ensure the continued uninterrupted supply of electricity;
 - 3.1.2. the energy sources from which electricity will be generated, will be from the two new peaking power generation facilities to be developed and operated by GDF Suez Consortium, led by GDF Suez Energy International, as part of the Project ("Electricity Generation Facilities");
 - 3.1.3. the electricity thus produced from the Electricity Generation Facilities may only be sold to Eskom; and
 - 3.1.4. Eskom shall purchase the available capacity and electricity as generated and delivered by the Electricity Generation Facilities in terms of agreements to be concluded with the sellers thereunder as incorporated by GDF Suez Energy International.
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