

GOVERNMENT NOTICE

DEPARTMENT OF ENERGY

No. R. 419

19 May 2015

ELECTRICITY REGULATION ACT, 2006 AMENDMENT OF THE ELECTRICITY REGULATIONS ON NEW GENERATION CAPACITY, 2011

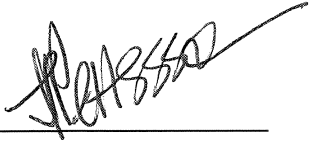
I, as Minister of Energy, acting in terms of section 35(4) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), intend to make the amendments to the Electricity Regulations on New Generation Capacity published by Government Notice R. 399 in Government *Gazette* 34262 of 4 May 2011, set out in the Schedule hereto.

The draft Amendment of the Electricity Regulations on New Generation Capacity is hereby published for public comments in terms of section 35(5) of the Electricity Regulation Act, 2006.

Interested persons who wish to comment on the draft Amendment of the Electricity Regulations on New Generation Capacity may submit their comments in writing before22 June..... 2015 to:

The Director-General
Department of Energy
Private Bag X96
Pretoria
0001

All comments must be marked for the attention of ... Mr Maduna Ngobeni ... and may either be posted to the above address or transmitted by fax to N/A or by email to maduna.ngobeni@energy.gov.za



Ms Tina Joemat-Pettersson

Minister of Energy

Date: 8/5/2015

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE

Definitions

1. In this schedule "the Regulations" means the Electricity Regulations on New Generation Capacity published by Government Notice No. R. 399 in *Government Gazette* 34262 of 4 May 2011.

Amendment of Regulation 1

2. Regulation 1 is hereby amended by:

- a) the deletion of the definition of "ancillary services";
- b) the insertion of the following definitions in their alphabetical order:

“**interconnected distribution power system**” means a distribution power system that is interconnected to a transmission power system either directly or through interconnection to another distribution power system where the latter system is directly or indirectly interconnected to a transmission power system;”.

“**national transmission power system**” means the interconnected transmission power system used for the supply of electricity to customers across the territory of the Republic;”.

“**seller**” means a person who concludes a power purchase agreement with a buyer in terms of which such person undertakes to sell or make available new generation capacity to the buyer;”.

c) substituting the definition of “existing generation facilities” with the following:

“**existing generation facilities**” means generation facilities that are in operation on or immediately prior to the date of [commencement of these Regulations] the relevant determination in terms of section 34(1) of the Act;”.

d) substituting the definition of “Independent Power Producer” or “IPP” with the following:

“**Independent Power Producer**” or “IPP” means any person in which the Government or any organ of state does not hold a controlling ownership interest (whether direct or indirect), which undertakes or intends to undertake the development or creation of new generation capacity pursuant to a determination made by the Minister in terms of section 34(1) of the Act;”

e) substituting the definition of “new generation capacity” with the following:

“**new generation capacity**” means electricity or electricity capacity made available, or generation capacity connected, to the national transmission power system or an interconnected distribution power system, pursuant to a determination in terms of section 34(1) of the Act, which is derived from:

- (a) new generation facilities;
- (b) an expansion of existing generation facilities;
- (c) existing generation facilities not previously supplying electricity to the national transmission power system or an interconnected distribution power system;
- (d) existing generation facilities through an extension of any existing agreement for the purchase of electricity capacity or electricity for an additional supply period in excess of three years, or through entering into a

new power purchase agreement for a supply period in excess of three years; or

(e) demand side reduction measures, including aggregation or management of demand side reduction;”.

f) substituting the definition of “power purchase agreement” or “PPA” with the following:

“**“power purchase agreement” or “PPA” means an agreement [concluded between a generator and the buyer] for the sale and purchase of new [electricity] generation capacity [or electricity derived there from, or both];”.**

Amendment of Regulation 2

3) Regulation 2 is amended by substituting sub-regulation (2) as follows:

“(2) These Regulations do not apply to the purchase of new **[electricity]** generation capacity **[and electricity]** by persons other than organs of state.”.

Amendment of Regulation 3

4) Regulation 3 is amended by substituting paragraph (b) as follows:

“(b) the regulation of entry by a buyer and a **[generator] seller** into a power purchase agreement;”.

Amendment of Regulation 5

5) Regulation 5 is amended by substituting paragraphs (b) and (e) of sub-regulation (2) with the following:

“(b) the proposed allocation of financial, technical and operational risk between the prospective buyer and the **[generator] seller**, and between the **[generator] seller** and the NTC or the distributor, as the case may be;”.

“(e) whether the appropriate [**generator**] seller should be Eskom as part of its services as the national electricity producer, another organ of state or an [**1PP**] 1PP.”.

Amendment of Regulation 8

6) Regulation 8 is amended by substituting sub-paragraph (2) with the following:

“(2) The procurement process in respect of a cross border project shall be conducted with due regard to [~~the~~] any agreements, memoranda of understanding or arrangements referred to in regulation 6(4).”

Amendment of Regulation 9

7) Regulation 9 is amended by substituting paragraphs (b) and (d) of sub-regulation (1) with the following:

“(b) appropriate technical, operational and financial risk transfer to the [**generator**] seller.”.

“(d) satisfactory due diligence in respect of the buyer’s representative and the proposed [**generator**] seller in relation to matters of their respective competence and capacity to enter into the power purchase agreement.”.