

DEPARTMENT OF ENERGY

NO. 1482

02 DECEMBER 2016

ELECTRICITY REGULATION ACT, 2006

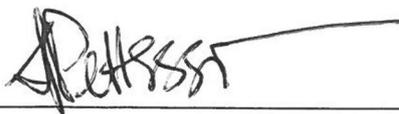
PUBLISHED FOR PUBLIC COMMENTS: DRAFT LICENSING EXEMPTION AND
REGISTRATION NOTICE

I, Tina Joemat-Pettersson, the Minister of Energy, intend, –

- (a) under section 36(4) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) (“the Act”), and after consultation with the National Energy Regulator (“Regulator”) and any person who may be affected, to amend Schedule 2 to the Act by substituting it with the Schedule (“the Schedule”) set out in the Annexure hereto; and
- (b) under section 9(1) of the Act, and in consultation with the Regulator, to determine that a person who operates a generation facility contemplated in items 1.1, 1.2, 1.3, 1.4, 1.5 or 1.6 of the Schedule, or a person who performs the activities of a reseller as contemplated in item 1.8 of the Schedule, must register with the Regulator.

Interested persons and organisations are invited to submit, within 30 days, written comments on the proposed Draft Licensing Exemption and Registration Notice to the Director-General, Department of Energy, Private Bag X96, Pretoria 0001; Matimba House 192 Visagie Street, Pretoria; or email to joseph.maraba@energy.gov.za (for attention Chief Director: Electricity Policy).

Kindly provide the name, address, telephone number, fax number and email address of the person or organisation submitting the comments. Comments received after the closing date may not be considered.



TINA JOEMAT- PETERSSON, MP

Minister of Energy

ANNEXURE**SCHEDULE 2****EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE**

1. The following activities are exempt from the requirement to apply for and hold a licence under the Act:
 - 1.1 The operation of a generation facility with an installed capacity of no more than 1MW which is connected to the national grid, in circumstances in which—
 - 1.1.1 the facility is installed and connected on the consumer side of the electricity meter and serves a single consumer located on that side of the electricity meter;
 - 1.1.2 the generator has entered into a connection agreement with, or obtained approval from, the holder of the relevant distribution licence, which agreement or approval authorises the supply of electricity into the national grid if the facility engages in such supply; and
 - 1.1.3 as at the date on which the connection agreement is entered into or the approval is obtained, the Minister has not published a notice in the *Gazette* stating that the amount of megawatts (MW) allocated in the integrated resource plan for embedded generation of this nature has been reached.
 - 1.2 The operation of a generation facility with an installed capacity of no more than 1MW which is connected to the national grid, in circumstances in which—
 - 1.2.1 the generation facility is operated solely to supply a single consumer or related consumers by transporting electricity through the national grid;
 - 1.2.2 the generator has entered into a use-of-system agreement with the holder of the distribution or transmission licence in respect of the power system over which the electricity is to be transported; and
 - 1.2.3 as at the date on which the use-of-system agreement is entered into, the Minister has not published a notice in the *Gazette* stating that the amount of MW allocated in the integrated resource plan for embedded generation of this nature has been reached.

- 1.3 The operation of a generation facility with an installed capacity of no more than 1MW which is not connected to the national grid, for the sole purpose of producing electricity—
- 1.3.1 for consumption by the generator or owner of the generation facility in question;
- 1.3.2 for consumption by a consumer who is related to the generator or owner of the generation facility within the meaning contemplated in section 2 of the Companies Act, 2008 (Act No. 71 of 2008); or
- 1.3.3 which is supplied to a consumer for consumption on the same property on which the generation facility is located.
- 1.4 The operation of a generation facility for demonstration purposes only, whether or not the facility is connected to a transmission or distribution power system, in circumstances in which—
- 1.4.1 the electricity produced by the generation facility is not sold; and
- 1.4.2 if the facility is connected to the national grid, the generator has entered into a connection agreement with, or obtained approval from, the holder of the relevant transmission or distribution licence.
- 1.5 The operation of a generation facility for the sole purpose of providing standby or back-up electricity in the event of, and for a duration no longer than, an electricity supply interruption.
- 1.6 The continued operation of an existing generation facility which, immediately prior to the date of commencement of this Schedule, was exempt from the requirement to apply for and hold a licence under the Act.
- 1.7 The operation of a distribution facility that is connected to a generation facility contemplated in items 1.1 to 1.6 and is used exclusively for the transportation of electricity from that facility to—
- 1.7.1 the consumer, if the electricity is not to be transported through the national grid; or
- 1.7.2 the nearest point of connection, if the electricity is to be transported through the national grid.
- 1.8 The sale of electricity by a reseller in circumstances in which—

- 1.8.1 the tariff or price charged by the reseller to consumers does not exceed the tariff or price that would have been charged to such consumers for the electricity if it had been purchased from the holder of a distribution licence over the area in which the electricity is supplied to the consumer; and
- 1.8.2 the reseller has entered into an agreement with the holder of a distribution licence over such area which regulates the relationship between the reseller and the holder of the distribution licence and the obligations of the reseller in respect of the quality of supply to consumers.
2. For purposes of item 1:
- 2.1 "electricity meter" means a meter that is used to measure the flow of electricity that flows out of or into the national grid and has been installed by or on behalf of a licensed distributor;
- 2.2 "existing generation facility" means a generation facility which was in operation on or immediately prior to the date of commencement of this Schedule;
- 2.3 "national grid" means the publicly-owned interconnected network of transmission and distribution power systems used for the supply of electricity to customers across the territory of the Republic, and includes any portion thereof;
- 2.4 "point of connection" means the point at which a generator or consumer connects to the national grid;
- 2.5 "property" means:
- 2.5.1 a farm, agricultural holding, erf or sectional title unit; and
- 2.5.2 a building located on that farm, agricultural holding, erf or sectional title unit notwithstanding that the building extends beyond the boundary of that farm, agricultural holding, erf or sectional title unit;
- 2.6 "related consumers" means consumers which are related to each other within the meaning contemplated in section 2 of the Companies Act, 2008 (Act No. 71 of 2008);
- 2.7 "reseller" means a person which purchases electricity from a distribution licensee in order to on-sell such electricity to consumers.

SUMMARY NOTE**DRAFT LICENSING AND REGISTRATION NOTICE ("the Notice")**

The purpose of the Notice is to exempt various categories of generation facilities and electricity resellers from the requirement to hold a licence under the Electricity Regulation Act, 2006 ("**ERA**"), and to require these activities to rather be registered with the National Energy Regulator ("**NERSA**"). It does so by amending the existing Schedule 2 to ERA so as to exempt these activities and, in the second paragraph of its introduction, requiring these activities to be registered.

Generally speaking, the Notice exempts five categories of generation facilities from the licensing requirement, in certain circumstances: embedded generation where no wheeling takes place (clause 1.1), facilities that wheel through the grid (clause 1.2 of the Annex), off-grid generation (clause 1.3 of the Annex), facilities used for demonstration purposes (clause 1.4 of the Annex), and back-up generation (clause 1.5 of the Annex).

Importantly, the first three categories of generation facilities are only exempt from the licensing requirement if their installed capacity is no more than 1MW. In the case of the first two categories, a facility will also only be eligible for exemption if the Minister of Energy ("**the Minister**") has not published a notice in the *Gazette* stating that the amount of megawatts (MW) allocated in the integrated resource plan ("**IRP**") for embedded generation of this nature has been reached.

The intention is that the IRP will specify an allocation for embedded generation facilities of up to 10MW in installed capacity. This provision in the IRP is intended to facilitate the licensing or registration of these facilities and do away with the need for the Minister on a case by case basis to grant approval for deviations from the IRP in terms of section 10(2)(g) of ERA for the relevant facilities. The result is, generally, as follows:

- qualifying generation facilities with a capacity of no more than 1MW will not require a licence but will rather be subject to registration with NERSA as per the Notice;
- qualifying generation facilities with a capacity of between 1MW and 10 MW will require a licence but no ministerial approval for deviation from the IRP will be required, provided that the IRP allocation for this category of facilities has not been used up; and
- generation facilities with a capacity of more than 10MW will require a ministerial approval for the deviation from the IRP for a licence to be issued by NERSA.

The sale of electricity by resellers (who purchase electricity from distribution licensees and on-

sell to consumers) is also exempt in specified circumstances. The requirements for this exemption are: the tariff charged by the reseller does not exceed the tariff that would have applied if the consumers had purchased the electricity from the relevant distributor; and an appropriate agreement is in place with the licensed distributor.