

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENERGY

NO. 659

13 MAY 2019

**CONSULTATION PAPER ON THE DRAFT LICENSING EXEMPTION AND
REGISTRATION NOTICE****1. SUBJECT**

Publication of the Draft Licensing Exemption and Registration Notice (Draft Notice).

2. PURPOSE

To request stakeholders to comment on the Draft Notice and submit the comments to the National Energy Regulator (NERSA) on or before the closing date.

3. BACKGROUND

The Minister of Energy amended Schedule II of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) with a Licensing Exemption and Registration Notice gazetted on 10 November 2017. The Licensing Exemption and Registration Notice repeals Schedule II, which provided for an exemption from holding a licence and introduced registration as a regulatory mechanism.

The Licensing Exemption and Registration Notice introduces upper and lower threshold for generation facilities that should register or exempted from registering with NERSA after being approved to connect to the grid by the network service provider or to operate within a licensed area of a particular licensee.

The Licensing Exemption and Registration Notice further requires that stand-by generators and co-generation facilities should not register with NERSA. There is no threshold set for stand-by generation and co-generation facilities save for requiring that the stand-by should only operate during the period of power supply interruption.

Electricity resellers, as defined in the Licensing Exemption and Registration Notice, are required to enter into a service level agreement with a licensed distributor to be able to supply electricity to any customer within a supply area of the distributor. The terms and conditions of the service level agreement must be approved by NERSA.

The Licensing Exemption and Registration Notice remains valid and applicable to the electricity supply industry until amended by the Minister.

On 8 June 2018, the Minister published a Draft Notice for public comments until 8 July 2018 proposing certain amendments to the Licensing Exemption and Registration Notice. The ministerial process of seeking public comments on the proposed amendments culminated in the Minister submitting the Draft Notice to NERSA for concurrence. In terms of section 9 of the Electricity Regulation Act, the determination for registration must be done in consultation with NERSA.

NERSA's consideration for concurrence is an administrative exercise and the National Energy Regulator Act, 2004 (Act No. 40 of 2004) requires NERSA to consult with all stakeholders prior to taking a decision or concluding on concurrence, otherwise the decision will be reviewable on application to court.

The Draft Notice incorporates NERSA's comments on the proposed amendment received from the Minister, and stakeholders are requested to comment on it. NERSA will evaluate the comments received and incorporate any changes as it deems necessary. The NERSA-approved Draft Notice shall then be communicated to the Minister.

4. **SECTIONS ON WHICH STAKEHOLDERS ARE REQUIRED TO COMMENT**

The following stakeholder comment outline is used as a guide on specific aspects of the Draft Notice that NERSA would prefer interested parties to provide comments on. However, this does not preclude stakeholders from commenting on the broader Draft Notice.

Stakeholders are required to provide comments on Clause 1 of the Draft Notice, which details definitions that are used in the Draft Notice.

Stakeholder comment #1

Whether the individual definitions provided appropriately define and give proper context to the industry terms and practice without minimising their meaning.

Stakeholders are required to provide their comments on Clause 2, which sets out facilities that are exempt from holding a licence and are required to register with NERSA.

Stakeholder comment #2

Clause 2.2.1 excludes off-grid generators from being licensed or registered. Mini grids are also off-grid and do not have Point of Connection. Do you believe that the mini grids should also not be registered or licensed? What would be the threshold for mini grids, if any?

Stakeholders are invited to comment on Clause 3, which details facilities and activities that must be registered with NERSA.

Stakeholder comment #3

Should related customers be separately provided for or should they just be classified as customers of the facility?

Stakeholder comment #4

Should the 36 months of the demonstration plant be an uninterrupted period or whenever the owner of the facility decides to operate the facility?

Stakeholder comment #5

Should the electricity produced from waste or residual product have a maximum threshold?

Stakeholder comment #6

Should facilities that were in operation prior to the Licensing Exemption and Registration Notice and were exempt from holding a licence be required to be registered with NERSA?

Stakeholder comment #7

How should resellers that are charging prices that are more than the approved tariffs be regulated?

All comments on the consultation paper should be addressed to: Mmboniseni Murathi (Mmboniseni.Murathi@nersa.org.za) or Tamai Hore (Tamai.Hore@nersa.org.za) or delivered at 526 Madiba Street, Arcadia, Gauteng, 0083. The deadline for the submission of comments is 24 May 2019.

GOVERNMENT NOTICE**DEPARTMENT OF ENERGY****No.****2018****ELECTRICITY REGULATION ACT, 2006****LICENSING EXEMPTION AND REGISTRATION NOTICE**

I, Jeff Radebe, the Minister of Energy, hereby;-

- (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, intend to amend Schedule 2 to the Act by substituting it with the Schedule (“the Schedule 2”) set out in the Annexure hereto; and
- (b) under section 9(1) of the Act, and in consultation with the Regulator, intend to determine that a person who operates a generation facility contemplated in items 3.1, 3.2, 3.3, 3.4 or a person who performs the activities of a reseller as contemplated in item 3.7 of the Schedule, must register with the Regulator.

JEFF RADEBE, MP
Minister of Energy

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

1. For purposes of items 2 and 3, unless defined in Chapter 1 (Section 1) of the Electricity Regulation Act:
 - 1.1 **“Capacity”** means, the installed capacity expressed in MW (AC) that a Unit or Facility is designed to produce
 - 1.2 **“Code”** means any applicable Code, approved by the Regulator from time to time;
 - 1.3 **“Connection agreement”** means an agreement detailing the conditions under which the Distributor or Transmitter intends to connect the Facility to distribution or transmission network.
 - 1.4 **“Customer”** means a person or legal entity that has entered into an agreement with a Generator, Distributor or Transmitter for the provision of distribution or transmission services;
 - 1.5 **“Demonstration purposes”** means the Facility constructed for the purpose to prove or test commercial and or technical viability within a specified time period;
 - 1.6 **“Embedded/ Distributed Generator”** means a legal entity that operates one or more Unit(s) that is connected to the distribution system;
 - 1.7 **“End-use customer”** means a user of electricity connected to the distribution system;
 - 1.8 **“Facility”** means the generation plant including associated distribution connection line located at the Site and comprising all plant, machinery and equipment, all associated buildings, structures, roads on the Site that are not national, provincial or municipal roads, and other appurtenances, together with all required interfaces to be constructed for the safe, efficient and timely operation of that Facility excluding the transmission connection works or distribution connection works;

- 1.9 **“Point of Connection or Delivery Point”** means the electrical node on a distribution or transmission system where a customer’s assets are physically connected to the Distributor’s or Transmitter’s assets;
- 1.10 **“Property”** means:
- 1.10.1 a farm, agricultural holding, erf or sectional title unit; and
- 1.10.2 unit;
- 1.11 **“Reseller”** means a person who contracts with a licensed distributor, landlord of any property to sell, provide a platform or any facility which enables an end user to purchase electricity;
- 1.12 **“Site”** means the property upon which the Facility is to be constructed and operated;
- 1.13 “
- 1.14 **“Wheeling”** means providing access to the grid by NSP to any generator or any other person to enable the generator or such a person to supply electricity to its load and the generator having concluded a connection agreement; ;
2. The following activities are exempt from the requirement to apply for, and hold a licence under the Act and these activities are not required to be registered with the Regulator-
- 2.1 The operation of a generation Facility for the sole purpose of providing standby or back-up electricity in the event of, for a duration no longer than, an electricity supply interruption.

- 2.2 The operation of any generation Facility provided that:
- 2.2.1 the Facility does not have a Point of Connection;
 - 2.2.2 if the Facility has a capacity of no more than 100 kilowatts and has an existing Point of Connection, the Distributor (and not the Regulator) has prescribed the conditions relating to the continued use of the Point of Connection.
3. The following activities are exempt from the requirement to apply for and hold a licence under the Act, but these activities must be registered with the Regulator;
- 3.1 The operation of a generation Facility which complies with the Code with a capacity of no more than 1MW with a Point of Connection on the distribution network , in circumstances in which-
 - 3.1.1 the generation Facility supplies electricity to a customer who is an end-use customer;
 - 3.1.2 the generation Facility is operated to supply an end-use customer or related customers by wheeling; and
 - 3.2 The operation of a generation Facility for demonstration purposes only, whether or not the Facility is connected to a transmission or distribution network, in circumstances in which-
 - 3.2.1 if the Facility is connected to the transmission or distribution network, the generator has complied with the requirements of the Code; and
 - 3.2.2 the Facility will be in operation for not more than 36 months.
 - 3.3 The operation of a generation Facility where the electricity is produced from waste or the residual product of an underlying industrial process, in circumstances in which-
 - 3.3.1 the generation Facility is operated solely to supply electricity for consumption by an end-use customer 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); and
 - 3.3.2 generation Facility complies with the Code;

- 3.4 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, in circumstances in which-
- 3.4.1 the generation Facility has complied with the Code and is connected to the transmission or distribution network; and
- 3.4.2 the generation Facility has filed for registration with the regulator within 6 months of commencement of the registration process by the Regulator.
- 3.5 The operation of a distribution Facility up to the Point of Connection that connects the generation Facility contemplated in items 3.1 to 3.4 -
- 3.5.1 where there is transportation of electricity through the transmission or distribution network.
- 3.6 The trading of electricity by a reseller in circumstances in which-
- 3.6.1 the price charged by the reseller to customers does not exceed the tariff that would have been charged to such customers for the electricity if it had been purchased from the holder of a distribution licence for the area in which the electricity is supplied to the customer; and
- 3.6.2 the reseller has entered into either a service delivery agreement in accordance with the Municipal Systems Act, (Act No 32 of 2000) (where the licensed distributor is a municipality) or a similar agreement with the distributor (where the licensed distributor is not a municipality) that 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 customers; and the Regulator has ratified the general terms and conditions of such service delivery agreement.