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**GOVERNMENT NOTICE**

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**DEPARTMENT OF ENERGY****No. R. 119****24 February 2010**

## **Regulatory Rules for Power Purchase Cost Recovery**

In terms of regulation 10 of GN R. 721 GG No. 32378 of 5 August 2009 (Electricity Regulation Act No.4 of 2006: Electricity Regulations on New Generation Capacity), the National Energy Regulator of South Africa has prepared Rules which will affect the recovery of power purchase cost falling under this act. The document, "Regulatory Rules for Power Purchase Cost Recovery" which contains these Rules is hereby promulgated. Electronic copies of the document may be downloaded from [www.nersa.org.za](http://www.nersa.org.za)

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RULES MADE BY THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA (NERSA) IN TERMS OF THE ELECTRICITY REGULATION ACT, 2006 (Act No. 4 of 2006)

**EXPLANATORY MEMORANDUM**

The provisions of regulation 10 of GN R.721 GG No. 32378 of 5 August 2009 (Electricity Regulation Act No. 4 of 2006: Electricity Regulations on New Generation Capacity) authorise the Energy Regulator to prepare and pass rules not inconsistent with these regulations for purposes of cost recovery by the system operator and the buyer which shall clearly and transparently set forth:

1. The factors that should be considered in assessing –
  - a) The affordability of the proposed IPP;
  - b) The allocation of financial, technical and operational risk between the buyer and the IPP; and
  - c) The anticipated value for money to be achieved by the IPP
2. The process to be followed by the buyer in seeking the approval of costs incurred under the power purchase agreement;
3. The process to be followed in assessing the principle of efficient risk transfer in the power purchase agreement and the mitigation mechanism in relation to the off-taker; and
4. All such matters as are necessary to give effect to these regulations

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### Objectives

The Regulator is directed by objectives under the Act to:

- a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in South Africa;
- b) ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic;
- c) facilitate investment in the electricity supply industry;
- d) facilitate universal access to electricity;
- e) promote the use of diverse energy sources and energy efficiency;
- f) promote competitiveness and customer and end user choice; and
- g) facilitate a fair balance between the interests of customers and end users, licensees, investors in the electricity supply industry and the public.

All of these matters would appear to be relevant to making rules for assessing and determining the conditions under which power purchase costs will be recovered by a licensee.

A set of objectives encapsulating these objects of the Act is re-articulated for the purposes of these rules. The objectives to be met by these rules are to:

- a) give regulatory certainty to customers in terms of impact on tariffs;
- b) ensure availability of electricity to consumers on an efficient and cost effective basis;
- c) ensure the financial viability of the sector and attract investments by private sector producers inclusive of their supporting lenders in terms of financial viability on long term contract arrangements and surety of their investment;

## Annexure 2

- d) promote transparency, consistency and predictability in regulatory approaches and minimise perceptions of regulatory risks; and
- e) promote competition, efficiency in operations and improvement in quality of supply.

## RULES

### 1 Definitions

In these rules any word or expression to which a meaning has been assigned in the regulations shall have the meaning so assigned unless the context indicates otherwise

**“Act”** means Electricity Regulations Act, 2006 (Act No. 4 of 2006);

**“Ancillary services costs”** means the cost of services that are necessary for the reliable and secure operation of the electrical system, including the transmission of electrical energy from generators to distributors and other customers;

**“Buyer”** means any person or entity or entity designated by the Minister of

Energy in terms of section 34(1)(4) and (d) of the Act and authorised under a licence, this includes any person or entity running a procurement process in respect of the IPP bid programme or entering into a power purchase agreement;

**“Capacity payments”** means payments to be provided under the terms of a power purchase agreement with regard to the fixed cost of power supply and could extend to fixed costs associated with primary energy. Such payments would typically require threshold levels of availability by the generator with price adjustments made if these thresholds are not met;

**“Energy payments”** means payments to be provided under the terms of a power purchase agreement with regard to variable cost of power supply. Such payments would typically be made in reference to energy generated and supplied to the power purchaser;

**“Firmness of supply”** means the level of certainty provided in regard to