
GOVERNMENT NOTICE

DEPARTMENT OF MINERALS AND ENERGY

No. R. 79

30 January 2009

ELECTRICITY REGULATION ACT, 2006

ELECTRICITY REGULATION

I, Buyelwa P Sonjica, Minister of Minerals and Energy under section 35(4) of the Electricity Regulation Act, 2006 (Act No 4 of 2006), intend to make the regulations in the Schedule.

SCHEDULE

DEFINITIONS

In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates –

“**Act**” Means the Electricity Regulation Act, 2006 (Act No. 4 of 2006);

“**Agreement**” means an agreement concluded between an IPP and the Buyer for the sale and purchase of electricity generation capacity and/ or of Ancillary Services;

“**Ancillary Services**” Means the services that are necessary for the reliable and secure transmission of electrical energy from generators to distributors and other customers as described in the Grid Code;

“**Buyer**” means any person or entity designated by the Minister in terms of Section 34(1)(c) and (d) and authorised under a trading licence;

“**Central Dispatch**” means the process of directing the electrical energy output of generation facilities into the national transmission system to achieve the stability, reliability and security of the national transmission system;

“**Department**” means the Department of Minerals and Energy;

“**Eskom**” means Eskom Holdings limited

“**Grid**” means the electricity transmission system in South Africa to which the IPP facility will be connected, and the same may be modified or developed during the terms of the Agreement;

“**Grid Code**” means the Grid Code applicable to the electricity supply industry, which is published by the Regulator from time to time;

“Independent Power Producer” or “IPP” means any undertaking by any person or entity, in which the government of South Africa does not hold a controlling ownership interest (whether direct or indirect), of new generation capacity (“NewGen”) at a generation facility following a determination made by the Minister in terms of section 34(1) of the Act;

“IPP Bid Programme” means a tender for the procurement of NewGen and/ or Ancillary Services from IPPs whose generation facilities will be located in South Africa, which has been planned for in the Integrated Resource Plan as determined by the Minister in terms of section 34(1)(e) of the Act;

“IPP Project” means a project undertaken following an IPP Bid Programme for the selection of a preferred bidder and IPP who will enter into the Project Agreement with the Buyer Office;

“Minister” means the Minister of Minerals and Energy;

“NTC” Means any person or entity licensed to execute the national transmission responsibility;

“PFMA” means the Public Finance Management Act 1999, (Act No.1 of 1999);

“Project Agreements” means the Agreements including the Agreement to be entered into by the Buyer Office and the IPP in respect of any IPP project;

“Regulator” means the National Energy Regulator of South Africa established in terms of the National Energy Regulator Act, 40 of 2004;

“Treasury Regulation 16” means the treasury regulations in respect of PPP’s issued in terms of the PFMA; and

“System Operator” Means any person responsible for the short-term reliability of the interconnected power system within its control area, comprising the

national transmission system, the NTC assets connected to national transmission system, the power stations connected to the national transmission system and international connectors, and for Central Dispatch.

To the extent that terms are used in these Regulations but not defined such terms shall be accorded the meaning given to them in the Act and in Treasury Regulation 16 of the PFMA.

Application of the regulations

(1) These Regulations shall:

- (a) apply to all types of generation technology including renewable generation and cogeneration technology, but excluding nuclear power generation technology.
- (b) apply to base load, mid-merit and peak generation.
- (c) take effect from date of promulgation, unless otherwise indicated in the text.

Objectives of the Regulations

(2) The objectives of these Regulations are:

- (a) the procurement by the Buyer Office of new generation capacity, and/or Ancillary Services from IPPs;
- (b) the regulation of entry by the Buyer and the IPP into the Agreement;
- (c) the facilitation, the fair treatment of and non-discrimination between IPP generation and Eskom generation;

- (d) to ensure the financial viability of the sector and to attract investments by IPPs;
- (e) to facilitate the full recovery by the Buyer of all costs incurred by it under or in connection with the Agreement and an appropriate return based on the risks assumed by the Buyer thereunder and, for this purpose to ensure the transparency and cost reflectivity in the determination of electricity tariffs;
- (f) establishment of guidelines which are to be applied in the undertaking of an IPP Bid Programme and the procurement of an IPP for purposes of NewGen;
- (g) framework of approval by the Regulator of the Agreement and the Reimbursement Costs;
- (h) framework of approval by the Department of the IPP Bid Programme, the procurement process and the relevant agreements to be concluded;
- (i) framework of approval by National Treasury in terms of the PFMA; and
- (j) matters incidental to any of the above.

Buyer Reimbursement

(3) The following costs of the Buyer shall form part of the Reimbursement Costs which the Buyer will be entitled to recover as part of the tariff:

- (a) The reasonable costs of its involvement where required by the Buyer Office in any new generation capacity;
- (b) All reasonable costs incurred by Eskom (to the extent not taken into account in either sub-regulation (a)) in connection with the negotiation of any