

(18 August 2015 – to date)

ELECTRICITY REGULATION ACT 4 OF 2006

Government Notice 660 in Government Gazette 28992, dated 5 July 2006. Commencement date: 1 August 2006 – unless otherwise indicated [Proc. R30, Gazette No. 9057, dated 21 July 2006].

MEDIUM TERM RISK MITIGATION PROJECT IPP PROCUREMENT PROGRAMME 2012 DETERMINATION UNDER SECTION 34(1) OF THE ELECTRICITY REGULATION ACT 4 OF 2006

Government Notice 1076 in Government Gazette 36005 dated 19 December 2012. Commencement date: 19 December 2012.

As amended by:

*Government Notice 731 and Government Notice 732 in Government Gazette 39111 dated 18 August 2015.
Commencement date: 18 August 2015.*

The Minister of Energy ("the Minister"), in consultation with the National Energy Regulator of South Africa ("NERSA"), acting under section 34(1) of the Electricity Regulation Act 4 of 2006 (as amended) (the "ERA") and the Electricity Regulations on New Generation Capacity (published as GNR. 399 in Government Gazette No. 34262 dated 04 May 2011) ("Regulations"), has determined as follows:

1. that energy generation capacity is needed to contribute towards energy security, including 1800 megawatts (MW) to be generated from:
 - (a) waste heat or furnace off gas;
 - (b) cogeneration (i.e. the simultaneous generation of electricity and useful thermal energy from a common fuel source); and
 - (c) an energy source which is a co-product, by-product, waste product or residual product of an industrial process and or sustainable agricultural or forestry activity.

This 1800 MW represents the "Cogen/Own Gen" supply side options identified in Table 1 of Annexure E of the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in *Government Gazette* No. 34263) ("IRP 2010-2030") for reducing the medium term supply-demand shortfall which was assessed at that point to be approximately 9 terawatt hours or 1000 MW as referred to in paragraph 2 on page 62 of Annexure E of the IRP 2010-2030, adjusted upwards to take into account that the shortfall in supply is greater than was anticipated due to, *inter alia*:

- the desired target of 85% as the Energy Availability Factor for existing generation assets not having been, and not being, achieved;
- the delays in bringing the new build programme into operation; and
- demand side management programme expectations not having been achieved;

(Paragraph 1 substituted by Government Notice 731 in Government Gazette 39111 dated 18 August 2015)

2.

(Paragraph 2 deleted by Government Notice 732 in Government Gazette 39111 dated 18 August 2015)

3. electricity produced from the energy sources described above ("the electricity"), shall be procured through one or more IPP procurement programmes as contemplated in the Regulations, which may, where appropriate and having regard to all relevant circumstances including the urgent need to secure connection to the Grid as soon as possible for the power procured pursuant to this Determination, include tendering processes, direct negotiation with one or more project developers, or other procurement procedures ("procurement programmes");

(Paragraph 3 substituted by Government Notice 731 in Government Gazette 39111 dated 18 August 2015)

4. one or more of the procurement programmes may require or permit cross border projects, provided that no power purchase agreement in respect of electricity from a cross border project shall be entered into unless the Minister is satisfied that adequate agreements, memoranda of understanding or arrangements are in place or will be in place between the Government and the relevant foreign government or international organisation, as are necessary to enable such cross border project;

5. the procurement programmes shall target connection to the Grid for the new generation capacity as soon as reasonably possible, taking into account all relevant factors including the urgent need to secure connection to the Grid for the power procured pursuant to this Determination, according to a schedule that may differ from the timetable set out in Table 3 of the IRP 2010-2030

6. the procurer identified in paragraph 8 below may, at any time, in the design of any procurement programme or in the course of conducting any procurement programme, reallocate the MW indicated in paragraphs 1 and 2 above between the technologies identified in those paragraphs;

7. the electricity may only be sold to the entity designated as the buyer in paragraph 10 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;

8. the procurer in respect of the procurement programmes will be the Department of Energy;

9. the role of the procurer will be to conceptualise and conduct the procurement programmes, including preparing any requests for information, requests for qualification, requests for proposals and/or all

related and, associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;

10. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and
11. the electricity must be purchased from independent power producers.

Concurrence to this Determination given by the National Energy Regulator of South Africa on the below mentioned date:

(Signed)

SIGNATURE: _____

MS CECILIA KHUZWAYO

CHAIRPERSON: NERSA

DATE: 18/10/12

Determination made by the Minister of Energy on the below mentioned date:

(Signed)

SIGNATURE: _____

MS DIPUO PETERS, MP

MINISTER: ENERGY

DATE: 12/12/12