



## **CONSULTATION PAPER**

# **CONCURRENCE WITH THE MINISTERIAL DETERMINATION ON THE PROCUREMENT OF NEW GENERATION CAPACITY FROM THE RANGE OF ENERGY TECHNOLOGIES**

**PUBLISHED ON 18 MARCH 2020**

***Issued by***

The National Energy Regulator  
526 Madiba Street  
Arcadia, Pretoria  
0007

***Contact Details:***

Tel: +27 (0)12 401 4600  
Fax: +27 (0)12 401 4700  
[irp-procurement.techrange@nersa.org.za](mailto:irp-procurement.techrange@nersa.org.za)  
[www.nersa.org.za](http://www.nersa.org.za)

## **EXECUTIVE SUMMARY**

The National Energy Regulator (NERSA) is a regulatory authority established as a juristic person in Terms of Section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004). NERSA's mandate includes regulation of the Electricity Supply Industry.

In accordance with Section 34 of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) ('the Act'), the Minister of Mineral Resources and Energy ("the Minister") may, in consultation with the Energy Regulator: -

- a) determine that the new generation capacity is needed to ensure the continued uninterrupted supply of electricity;
- b) determine the types of energy sources from which electricity must be generated, and the percentages of electricity that must be generated from such sources;
- c) determine that the electricity thus produced may only be sold to the persons or in a manner set out in such notice;
- d) determine that electricity thus produced must be purchased by the persons set out in such notice;
- e) require that new generation capacity must-
  - i. be established through a tendering procedure which is fair, equitable, transparent, competitive and cost-effective;
  - ii. Provide for private sector participation.

The Minister is considering closing the supply gap in the immediate term that includes capacity procurement of: -

- 1) 2 000 megawatts (MW) to be procured from a range of energy source technologies in accordance with the short-term risk mitigation capacity allocated under the heading "Others", for the years 2019 to 2022, in Table 5 of the Integrated Resource Plan for Electricity 2019 -2030 (published as GN 1360 of 18 October 2019 in Government Gazette No. 42784) ("IRP 2019").

It is based on the above reasoning that the Energy Regulator require Public Participation for the procurement of this capacity and as a result of the supply constraints, which enables it to appropriately apply its regulatory views and decision making prior to concurrence with the ministerial determination.

In satisfying the proposed concurrence process in accordance with section 34 of the Act, the Energy Regulator is requesting the stakeholders to comment on the new generation capacity to be procured from a range of energy source as set out in this consultation paper. The comments should be addressed to: **Mr Dennis Seemela at the National Energy Regulator, Kulawula House, 526 Madiba Street, Arcadia, Pretoria, 0083; or emailed to: [irp-procurement.techrange@nersa.org.za](mailto:irp-procurement.techrange@nersa.org.za); or posted to P.O Box 40343, Arcadia, Pretoria, 0007, South Africa.**

**The deadline for the submission of comments is 14 April 2020.**

Kindly provide the name, address, telephone number, fax number and email address of the person or organization submitting the comments. Submissions made after the deadline will not be considered.

NERSA will collate all comments received, which will be taken into consideration when the decision to concur with the Minister is made.

## TABLE OF CONTENTS

1. DEFINITIONS, ABBREVIATIONS AND ACRONYMS .....	5
2. BACKGROUND .....	8
3. 2 000 NEW GENERATION CAPACITY TO BE PROCURED FROM A RANGE OF ENERGY SOURCE TECHNOLOGIES.....	9
4. PROCUREMENT PROCESS UNDER THE IPP PROCUREMENT PROGRAMME	10
5. FAST TRACKED CONCURRENCE PROCESS .....	12
6. INDICATIVE TIMELINES FOR THE CONCURRENCE PROCESS.....	13

## 1. DEFINITIONS, ABBREVIATIONS AND ACRONYMS

### DEFINITIONS

In this consultation paper, any word or expression to which a meaning has been assigned, shall have a meaning so assigned and, unless the context otherwise indicates-

**'buyer'** means, in relation to a new generation capacity project, any organ of state designated by the Minister in terms of section 34(1)(c) and (d) of the Act. In this regard the buyer is Eskom.

**'Eskom'** means Eskom Holdings Limited contemplated in section 3(1) of the Eskom Conversion Act, 2001(Act No.13 of 2001).

**'Government'** means the Government of the Republic.

**'Independent Power Producer (IPP)'** means any person in which the Government or any organ of state does not hold a controlling ownership interest (whether directly or indirectly), which undertakes or intends to undertake the development of new generation pursuant to a determination made by the Minister in terms of section 34(1) of the Act.

**'Minister'** means the Minister of Mineral Resources and Energy.

**'new generation capacity'** means a project for the development of new generation capacity pursuant to a determination made by the Minister in terms of section 34 of the Act.

**'organ of state'** bears the meaning ascribed to it in section 239 of the Constitution.

**‘Peaking Project’** means the energy plants or power stations that have very low capacity factors, i.e. generally produce energy for limited periods, specifically during peak-demand periods, with storage that supports energy on demand.

**‘power purchase agreement’** or **“PPA”** means an agreement concluded between a generator and the buyer for the sale and purchase of new electricity generation capacity or electricity derived therefrom, or both.

**‘procurer’** means the person designated by the Minister in terms of section 34 as being responsible for the preparation, management and implementation of the activities related to procurement of new generation capacity under an IPP procurement programme including the negotiation of the applicable power purchase agreements, which person may or may not be a buyer.

**‘the Act’** means the Electricity Regulation Act, 2006 (Act No.4 of 2006).

## ABBREVIATIONS AND ACRONYMS

<b>DMRE</b>	Department of Mineral Resources and Energy
<b>IPP</b>	Independent Power Producer
<b>IRP</b>	Integrated Resource Plan
<b>MW</b>	Megawatts
<b>NERSA</b>	National Energy Regulator of South Africa

## 2. BACKGROUND

Certain provisions of the Electricity Regulation Act require participation of NERSA in Policy implementation and as a result of the supply constraints and to comply with the declarations and protocols that the Republic of South Africa has signed under the tutelage of the United Nation. The implementation of policy in terms of Section 34 of the Act requires NERSA to appropriately apply its regulatory reviews and to make decision making prior to the conclusion of the determination process by the Minister. It is incumbent on NERSA when making its decision to ensure that it complies with applicable laws including National Energy Regulator Act, 2004 (Act No 40 of 2004) ('the Act') and any appropriate procedure to clothe the process with legal certainty.

On 21 February 2020, NERSA received the proposed determination from the Minister in terms of section 34 of the Act. The proposed determination is trying to address the ongoing load shedding challenges in the country by procuring:

- 1) 2 000MW to be procured from a range of energy source technologies, for the years 2019 to 2022, in Table 5 of the IRP 2019.

The 2 000MW capacity limit was adopted as practical options to close the gap in the immediate-term by coming up with these interventions to be deployed to minimise the risk of load shedding and/or extensive usage of diesel peaking plants.

NERSA has not yet formulated any opinions on the issues that are raised in this consultation paper but is only raising them such that stakeholders can give their opinion and inputs on these issues.

The Consultation Paper consist of the following main sections:

- 1) 2 000MW to be procured from a range of energy source technologies;
- 2) Procurement Process under the IPP procurement programme
- 3) Fast-tracked concurrence process.

### **3. 2 000 NEW GENERATION CAPACITY TO BE PROCURED FROM A RANGE OF ENERGY SOURCE TECHNOLOGIES**

In the short-term, the supply and demand side interventions will have to be deployed to minimise the risk of load shedding and/or extensive usage of diesel peaking plants. The short-term gap in this regard is estimated to be in the ranges of 2 000MW to 3 000MW.

This shortfall is primary driven by Eskom fleet poor performance. The performance has deteriorated even lower than the assumptions made in the IRP 2019, with the Eskom's Energy Availability Factor (EAF) sitting at 70% for FY 2019 and Year to Date (YTD) sitting at 68%, this shortfall is most likely to increase.

Therefore, such interventions will assist with creating reserve capacity needed to complement Eskom's declining performance and reduce the utilisation of diesel generators.

It is based on the above reasoning that Stakeholders are requested to provide inputs on the following aspects among others: -

- i. Is 2 000MW sufficient to ensure uninterrupted supply of electricity in the short and medium-term?
- ii. What should be the minimum and maximum plant size that should be allowed to be connected into the Grid?
- iii. Provide your opinion on the socio-economic aspects of procuring energy from a range of energy source technologies (i.e. in terms of the number of jobs each technology can develop)?
- iv. What do you think should be the dominant energy source of technology in this allocation?
- v. If the energy source is technology Solar PV and/or Wind Generation, should storage be included to cater for peak periods? If so what should be the storage capacity?

- vi. Do you think coal-fired generation technology should form part of this allocation?
- vii. Should this range of energy source technologies be dispatchable?
- viii. Do you think the time allowed for this build allocation will assist in alleviating load shedding?
- ix. Provide your thoughts on the cost that will be associated with the new allocated generation capacity in line with a mandate to ensure long term sustainability of electricity supply industry as well as affordability?

#### **4. PROCUREMENT PROCESS UNDER THE IPP PROCUREMENT PROGRAMME**

The electricity produced from new generation capacity shall be procured through one or more tendering procedures which are fair, equitable, transparent, competitive and cost-effective and shall constitute Independent Power Producer (IPP) procurement programmes as contemplated in the Regulations.

The procurer shall in the appropriate procurement documentation specify any qualification and evaluation criteria applicable to this IPP programme.

The buyer shall not itself conduct a procurement process under this determination.

The procurement programmes shall target connection to the Grid for the new generation capacity as soon as reasonably possible in line with the timetable set out in Table 1. Deviations from the timetable set out in Table 1 will be permitted to the extent necessary taking into account all relevant factors including prevailing energy security risks, the time required for efficient procurement and the required construction timelines for such new generation capacity facility.

The designated buyer is Eskom Holding SOC Limited and the procurer is the Department of Mineral Resources and Energy (DMRE).

The role of the procurer will be to conduct the procurement programmes, including preparing any requests for proposals and/or related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other projects agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control.

In lieu of the above, Stakeholders are requested to provide inputs on the following aspects among others: -

- i. Provide your thoughts on Eskom as a chosen buyer of the new generation capacity?
- ii. Must it only be Eskom who is the Buyer of this electricity or other Licenced Electricity Distributors (i.e. Municipalities or Private Distributor) must also be allowed to buy?
- iii. Do you think the trader should also be allowed to buy this new capacity?
- iv. Do you think it fair for Eskom to be restricted as the buyer instead of providing an option for it to be part of the build allocation?
- v. Provide your thoughts on IPPs as the chosen builders of the new generation capacity?
- vi. Provide your thoughts on the method of procurement chosen for the procurement of new generation capacity?
- vii. Provide what you consider to be the risks associated with the new capacity?
- viii. Provide your opinion on the security of supply impact in general as well as in light of the additional capacity?
- ix. Must the NERSA concur with this ministerial determination as per the prescripts of section 34 of the Act?

## 5. FAST TRACKED CONCURRENCE PROCESS

NERSA has processes and procedures in place to deal with requests for concurrence in terms of section 34 of the Act that also satisfy the provisions of the National Energy Regulator Act and Promotion of Administrative Justice Act, 2000.

Due to the urgency of the need to minimise the risk of load shedding and/or extensive use of diesel peaking plants. The Energy Regulator will follow a fast-tracked concurrence process that will only take into consideration written comments from Stakeholder but will not have a public hearing where presentations may be made by interested and/or affected parties.

In light of the above, Stakeholders and members of the public are requested to, in writing, submit written comments on the issues raised in this Consultation Paper. Written comments can be forwarded to [irp-procurement.techrange@nersa.org.za](mailto:irp-procurement.techrange@nersa.org.za); hand-delivered to Kulawula House, 526 Madiba Street, Arcadia, Pretoria, 0083; or posted to P.O Box 40343, Arcadia, 0007, Pretoria, South Africa.

**The closing date for the submission is 14 April 2020.** For more information and queries on the above, please contact Mr Dennis Seemela on the below details:

Tel: 012 401 4600

Fax: 012 401 4700

## 6. INDICATIVE TIMELINES FOR THE CONCURRENCE PROCESS

Due to the urgency of the need to minimise the risk of load shedding and/or extensive use of diesel peaking plants. The Energy Regulator will follow a fast-tracked concurrence process as stipulated in Table 1.

**Table 1: Indicative timelines of the fast-tracked concurrence process**

<b>Activities</b>	<b>No of days</b>
Development of consultation	5
Preparation of ELS submission	5
ELS Approval of Consultation Paper	10
Publishing the Consultation Paper	15
Analysing comments	5
Preparation of ELS submission and RFD	5
ELS Approval of Concurrence Submission	5
Preparation of ER submission and RFD	5
ER Approval Concurrence Submission	5
<b>Total</b>	<b>60</b>  (Approximately 3 months)

ELS – Electricity Subcommittee

RFD – Decision and Reasons for Decision

ER – Energy Regulator ('NERSA Board')

Day – Working day