

05 May 2025

Mr Subesh Pillay  
Director General  
Department of Energy and Electricity  
192 Visagie Street  
Pretoria  
0001

**BY ELECTRONIC MAIL:** [Donald.Ndobe@dmre.gov.za](mailto:Donald.Ndobe@dmre.gov.za)

Dear Mr Pillay

**Subject: Energy Council Comments on Proposed Electricity Transmission Infrastructure Regulations**

Dear Director General,

The Energy Council appreciates the opportunity to review and provide feedback on the proposed Electricity Transmission Infrastructure Regulations. We recognize the importance of establishing a robust regulatory framework to enhance electricity transmission, support energy security, and promote sustainable growth within the sector.

Following a thorough assessment, the Council has identified several key considerations:

1. **Investment and Implementation Challenges** – The proposed regulations must adequately address financial and technical barriers to ensure effective implementation. A streamlined approval process and clear investment incentives are essential.
2. **Grid Modernization and Efficiency** – The regulations should encourage modern transmission technologies that enhance grid stability, efficiency, and integration with renewable energy sources.
3. **Regulatory Clarity and Stakeholder Collaboration** – A transparent regulatory structure, aligned with industry best practices, will foster trust and encourage stakeholder participation in infrastructure development.
4. **Environmental and Social Impacts** – The Council emphasizes the need for comprehensive environmental and social impact assessments to minimize disruptions and promote sustainable development.

Kindly find included with this letter comments on the proposed Electricity Transmission Infrastructure Regulations as requested.

**Energy Council NPC** 2022/449689/08

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We respectfully request further engagement with the Department to discuss these concerns and collaborate on refining the regulations to better serve the nation's energy needs.

We look forward to continued dialogue and appreciate your attention to these matters.

Yours sincerely



**Victor Sibiya**

Senior Manager: Policy and Public Sector Stakeholders

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# Energy Council of South Africa's comments on Electricity Regulation Act, 2006 - Draft Electricity Transmission Infrastructure Regulations.



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## 1. The Electricity Transmission Infrastructure Regulations .

Under section 35(4) of the Electricity Regulation Act, 2006 (Act No.4 of 2006) and after consultations with the National Energy Regulator of South Africa (NERSA), The Minister intends to make the following regulations in the Schedule.

## 2. Definitions.

Stakeholders are requested to comment on the draft Infrastructure regulations framework response guide definitions.

In these regulations, any word or expression to which a meaning has been assigned to in the Act, has the same meaning so assigned and, unless the context otherwise indicates-

1. *“buyer”* means the person designated by the Minister, as contemplated in section 34(3)(d) and (e) of the Act; as a buyer of electricity transmission infrastructure, which is the subject of a determination.
2. *“determination”* means a determination made by the Minister in terms of section 34(1)(b), read with section 34(3) and (4) and, where applicable, section 34 (12), of the Act;
3. *“energy infrastructure project”* means a project contemplated in section 34(12) of the Act;
4. *“Government”* means the government of the Republic of South Africa;
5. *“IRP”* means the integrated resource plan applicable at the date of publication of a determination by notice in the Gazette;
6. *“National Treasury”* means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No.1 of 1999);
7. *“organ of state”* has the meaning assigned to it in section 239 of the Constitution of the Republic of South Africa, 1996;
8. *“private party”* means a person, consortium, or joint venture in which the Government or other organs of state do not hold a controlling ownership interest either directly or indirectly;
9. *“procurer”* means the person designated by the Minister in a determination, as the person responsible for the preparation, management and implementation of the activities related to the procurement of transmission capacity, including the negotiation of the applicable transmission services agreements, which person may or may not be the buyer or user;

10. *“Public Finance Management Act”* means the Public Finance Management Act, 1999 (Act No.1 of 1999);
11. *“TDP”* means the transmission development plan applicable at the date of publication of a determination by notice in the Gazette;
12. *“the Act”* means the Electricity Regulation Act, 2006 (Act No.4 of 2006);
13. *“transmission capacity”* means the electricity transmission infrastructure and associated activities that are the subjects of a determination, and which may include the design, construction, funding, management, maintenance, or operation of such electricity transmission infrastructure;
14. *“transmission service provider”* means a private party, selected pursuant to a basis that the transmission capacity in question will be made available to a user or purchased by buyer;
15. *“transmission services agreement”* means the contractual arrangements entered into between a user and a transmission service provider, or a buyer and a transmission service provider, as applicable, establishing their respective rights and obligations in respect of the transmission capacity;
16. *“TSO SOC”* means the Transmission System Operator SOC Limited to be established in terms of section 34A of the Act, and for the period prior to establishment of TSO SOC, the National Transmission Company South Africa SOC Limited;
17. *“user”* means a person designated by the Minister as contemplated in section 34(3)(d) and (e) of the Act as a user of electricity transmission capacity procured according to a determination; and
18. *“value for money”* means that the transmission capacity procured according to a determination results in a net benefit to the buyer or user as the case may be or to the Government, having regard to cost, price, quality, quantity, risk transfer, social and economic benefit, or a combination thereof.

## 2.1. Definitions

Council members are requested to comment on the definitions of the draft Infrastructure regulations framework response guide definitions.

Questions Reference	Comments
<b>Draft Regulation Reference Number:</b> pgs. 5-7	<ul style="list-style-type: none"> <li>The definition of <i>“Energy Infrastructure Project”</i> is broad and may overlap with existing project classifications under the Infrastructure Development Act (IDA). A project could be classified both as an “Energy Infrastructure Project” under these Draft Regulations and a strategic integrated project under the IDA. This raises questions such as: Which law governs the planning, coordination, and approval process? Which agency has ultimate authority (PICC vs. DMRE/NERSA)? It is recommended to align and reference this Act to avoid jurisdictional ambiguity.</li> <li><i>“Transmission Development Plan (TDP)”</i> should include a requirement for public disclosure and transparency measures.</li> <li>Suggest including definitions for key terms such as “Just Energy Transition Zones” and “Grid Access Priority,” which are increasingly relevant in energy infrastructure planning. This ensures alignment between multiple policies, departments, and legal instruments (e.g., IRP, Just Energy Transition Investment Plan, Municipal Energy Plans); aligns with global best practices; gives meaning to terms increasingly used in government discourse and media, but not yet codified.</li> <li>Clarify <i>“value for money”</i> to include lifecycle costs (e.g., maintenance, decommissioning)</li> <li>Suggest the DEE publishes a simplified glossary for public accessibility.</li> </ul>

## 3. Application of Regulations

### 3.1. Application of Regulations

Council members are requested to comment on the application of regulations on the draft Infrastructure regulations framework response guide application:

Questions Reference	Comments
<b>Draft Regulation Reference Number:</b> Pg 7	<ul style="list-style-type: none"> <li>• The scope should explicitly state whether it applies to both new entrants and existing transmission infrastructure operators. Clarity is needed on how these regulations interface with municipal distribution networks and embedded generation which may use parts of the transmission system.</li> <li>• Section 2(2)(a)–(c) should be amended to clarify that exemptions for TSO SOC do not apply to projects co-developed or co-funded with private parties, to avoid regulatory loopholes and ensuring all such projects undergo full regulatory scrutiny.</li> <li>• 2.(2) - In our view the TSO SOC and Transmission Service Providers should be subject to the same regulations.</li> <li>• 2.(2)(b) – Would public procurement programs like that run by the ITP Office not constitute procurement by the TSO SOC's "own initiative"?</li> <li>• The regulations should clearly define their scope of application. Do they apply to upgrades, maintenance, and repowering of existing infrastructure, or only to new developments?</li> <li>• <b>Governance:</b> We believe there is insufficient clarity regarding the roles and responsibilities of different entities such as Eskom, the National Energy Regulator (NERSA), and municipalities. A more structured delineation of duties would strengthen governance and accountability.</li> </ul>

### 4. Objectives of Regulations



#### 4.1. Objectives of Regulations

Council members are requested to comment on the objectives of regulations from the draft Infrastructure regulations framework response guide application:

Questions Reference	Comments
<b>Draft Regulation Reference Number:</b> pgs. 7-8	<ul style="list-style-type: none"> <li>• Strongly support the objective to promote coordinated development and integration with national energy plans.</li> <li>• Recommend that the objectives explicitly include support for <b>grid decarbonization, local economic development, and grid resilience</b>.</li> <li>• The regulations should also promote <b>regional integration</b> under SAPP (Southern African Power Pool), which is key for cross-border power exchange and security of supply.</li> <li>• The following should be added as a standalone objective to protect consumers "Ensure affordable electricity tariffs"</li> <li>• 3.(d) – The clause of the ERA referenced, Section 34(1)(b) of the Act, provides the Minister with the power to determine the types of energy generated (read to mean the technologies used to generate power) as well as the percentages of electricity that must be generated from such sources. The Draft Regulations being structured specifically to reinforce this must be questioned, as transmission infrastructure expansion should enable all forms of energy generation and be technology agnostic. With the recent advances of energy storage technology, energy sources previously considered intermittent can now be modelled as firm supplies making the emphasis of transmission expansion the decongestion of the entire network.</li> </ul>

#### 5. Deviation from IRP or TDP

##### 5.1. Deviation from IRP or TDP

Council members are requested to comment on the deviations from IRP or TDP from the draft Infrastructure regulations framework response guide:

Questions Reference	Comments
<p><b>Draft Regulation</b> <b>Reference Number:</b> pgs. 8-9</p>	<ul style="list-style-type: none"> <li>• Allowing deviations is necessary for flexibility but must be tightly governed. Recommend requiring <b>Regulator-approved criteria</b> for assessing deviation requests.</li> <li>• Public consultation should be required when significant deviations affect regional grid planning or environmental impact or communities.</li> <li>• Minister's deviation power (Section 4(1)) is overly broad. Deviations should require NERSA's concurrence (governed by the Energy Regulation Act). This amendment would maintain necessary executive flexibility while introducing appropriate democratic and technical oversight mechanisms that balance speed of response with accountability. The energy sector's history of procurement irregularities and cost overruns demonstrates why such safeguards are crucial.</li> <li>• 4.(1)(b) – Readiness of infrastructure projects should be linked directly to the IGCAR process. If there are generation facilities in an area which are ready to connect in all forms apart from those which cannot be obtained without a viable point of connection, then particular emphasis should be placed on readying this area for connection of further generation.</li> <li>• 4.(1) – In our reading of the Act, Section 34(6)(b) does not exist. Contextually, we believe this should refer to Section 34(1)(b). Please clarify how Section 37 is relevant.</li> <li>• 4.(2) – Section 34(8) in the ERA does not exist.</li> </ul> <p><b>Consultation</b></p> <ul style="list-style-type: none"> <li>• 5.(3) - Specific heed should be paid in the assessment of comments to the competitive nature of the industry. The party intended to bear the cost of the infrastructure should also be noted, as privately funded upgrades will offer significantly more value for money if they are strategically located.</li> </ul>

	<ul style="list-style-type: none"> <li>• Stakeholder and Landowner Engagement: We recommend the inclusion of a more detailed public participation framework. This should include mandated public participation periods., This will ensure that landowners and communities are adequately consulted and have access to fair objection and dispute resolution mechanisms. This is a fundamental requirement for a Social License to Operate.</li> <li>• Clause 4 (b) – on what basis will the Minister determine whether the IRP or TDP appropriately orders or priorities transmission capacity requirements?</li> <li>• As we know the IRP goes through its own rigorous consultations (and is not updated frequently) whereas the TDP is not consulted on, but released by Eskom. Are these regulations trying to bridge the gap between the two?</li> </ul>
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## 6. Determinations

### 6.1. Determinations

Council members are requested to comment on the Determinations section of the draft Infrastructure regulations framework response guide:

Questions Reference	Comments
<b>Draft Regulation</b> <b>Reference Number:</b> pgs. 9-11	<ul style="list-style-type: none"> <li>• Determinations must be better synchronized with grid capacity studies and IRP updates.</li> <li>• Section 6(5): Require TSO SOC to disclose <i>all</i> prior project studies (not just "relevant" ones) to avoid information asymmetry.</li> <li>• Clause 6 (1) – for the transmission capacity required, does the Minister rely solely on the TDP and / or GCCA? What is the frequency of such determinations?</li> <li>• 6.(2) – This regulation must also be applied to the TSO SOC.</li> <li>• 6.(3) – Not sure how Section 34(4) is relevant.</li> <li>• 6.(3)(a) – Section 34(9) does not exist.</li> <li>• Clause 6 (3) (b) – which feasibility studies are being referred to here? Also, feasibility studies are mentioned in clause (7) and (9).</li> <li>• Clause 6 (4) – what is the rationality for preventing the TSO SOC to procure transmission capacity? It is not clear if this will prohibit the TSO from performing its duties and result in delays in new infrastructure builds (where the NTCSA has received budget). The risk is that there could be more delays due to inconsistent Ministerial determinations.</li> </ul>

## 7. Feasibility studies

### 7.1. Feasibility studies

Council members are requested to comment on the Feasibility studies section of the draft Infrastructure regulations framework response guide:

Questions Reference	Comments
<b>Draft Regulation</b> <b>Reference Number:</b> pgs. 11-12	<ul style="list-style-type: none"> <li>It is recommended that the need for a feasibility study be driven by the GCCA and Eskom: if Eskom planning deem it necessary, this should be adequate for the Minister to move forward.</li> </ul> Any study should include the following: <ol style="list-style-type: none"> <li>Social and environmental impact assessments.</li> <li>Just Energy Transition considerations, particularly in historically disadvantaged areas.</li> <li>Public disclosure of non-sensitive study outcomes.</li> <li>Require feasibility studies to assess health impacts under NEMA</li> <li>Include geopolitical risk assessments for cross-border projects</li> </ol>

## 8. Energy Infrastructure Project

### 8.1. Energy Infrastructure Project

Council members are requested to comment on the Energy Infrastructure Project section of the draft Infrastructure regulations framework response guide:

Questions Reference	Comments
<b>Draft Regulation Reference Number:</b> pgs. 12-13	<ul style="list-style-type: none"> <li>• The classification criteria for an “Energy Infrastructure Project” should be clearly defined to avoid regulatory ambiguity.</li> <li>• Projects designated under the Strategic Infrastructure Projects (SIPs) should be referenced to prevent duplication or conflict.</li> <li>• Define "advantageous to Government" (Section 9(1)) to include local job creation and community equity shares.</li> <li>• Clause (9) – the Minister is to be satisfied that the new generation capacity is advantageous based on a feasibility study – not sure how this would work or if it is over-reaching. Is it not the purpose of the TDP (partly based on the IRP and vice versa) to determine this?</li> <li>• 9.(1) – The Minister’s satisfaction thresholds and assessment criteria must be identical whether applied to the TSO SOC or private procurers. Competitive and fair queueing must be a priority.</li> <li>• 9.(2) – Section 34(12) does not exist.</li> </ul>

## 9. Transmission Services Agreements

<p style="text-align: center;"><b>9.1. Transmission services agreements</b></p> <p>Council members are requested to comment on the Transmission services agreements section of the draft Infrastructure regulations framework response guide:</p>	
Questions Reference	Comments

<b>Draft Regulation Reference Number:</b> pgs. 13-14	<ul style="list-style-type: none"> <li>• TSAs should be subject to regulatory oversight to ensure non-discriminatory access, transparent pricing, and compliance with NERSA-approved tariffs.</li> <li>• Recommend inclusion of standardized contractual principles to assist smaller generators and municipalities.</li> <li>• Penalise transmission service providers for <i>service interruptions</i> via tariff rebates to end-users.</li> <li>• Section 10(1)(d) should require independent, accredited audits of a transmission service provider's technical, financial, and operational competence—aligned with SAQA standards and ISO 55000 asset management certification—before contract award.</li> </ul>
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## 10. Cost Recovery

<p style="text-align: center;"><b>10.1. Cost Recovery</b></p> <p>Council members are requested to comment on the cost recovery section of the draft Infrastructure regulations framework response guide:</p>	
<b>Questions Reference</b>	<b>Comments</b>
<b>Draft Regulation Reference Number:</b>	<ul style="list-style-type: none"> <li>• There is insufficient detail on cost recovery mechanisms. Propose requiring:           <ol style="list-style-type: none"> <li>1. Clear formulas aligned with NERSA tariff guidelines.</li> </ol> </li> </ul>

Pg 14	<p>2. Measures to protect end-users from excessive pass-through costs.</p> <p>3. A transparent public review process for cost recovery approval.</p> <ul style="list-style-type: none"> <li>• "Efficiently incurred costs" (Section 11(1)) is vague. Use <i>NERSA's MYPD methodology</i> for benchmarking.</li> <li>• Exclude <i>corporate debt</i> from recoverable costs to shield consumers.</li> <li>• 11.(1)(b) – The mention of expropriation needs clarifying. Does this infer that the state will expropriate on behalf of the private entity?</li> <li>• Clause (11) (2) – it is good to see the Regulator needs to confirm the categories of costs that can be recovered through the transmitter's tariffs. Assume this is related to the NTCSA's recovery through MYPD tariffs. Given that Eskom does not always received the increase it asks for, from NERSA, it is imperative to ensure appropriate cost recovery.</li> </ul>
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## 11. Exemptions

11.1. Exemptions	
Council members are requested to comment on the Transmission services agreements section of the draft Infrastructure regulations framework response guide:	
Questions Reference	Comments
<b>Draft Regulation Reference Number:</b> pgs. 15	<ul style="list-style-type: none"> <li>• Exemptions should be limited, transparent, and approved through a published Regulator process.</li> <li>• A risk-based assessment tool should be introduced to avoid abuse of this provision.</li> <li>• We posit that the Minister, as a single entity, should not be given the right to exempt parties from these requirements based on a subjective understanding of justification. If exemptions are required, then there should be specific wording to outline how a project would qualify for an exemption from the stated criteria.</li> </ul>



	There should also be public participation and oversight from an independent board which could identify any corruption or conflicts of interest in decision making.
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## 12. Any Other Comments

12.1. Other Comments	
Council members are requested to provide comments on any other sections.	
<ul style="list-style-type: none"> <li>For transparency, it is recommended to have procurement outcomes on published on the DMRE's website</li> <li>The draft regulations are a critical step toward addressing South Africa's transmission bottlenecks and enabling private-sector participation</li> <li>The regulations represent a positive step toward a modernized, efficient, and inclusive transmission network.</li> <li>Recommend regular review intervals (e.g., every 3–5 years) to adapt to technology changes (e.g., battery storage, virtual power plants).</li> <li>A clear <b>implementation timeline</b> should be published after the regulations are finalized.</li> <li>Capacity building within municipalities and Eskom Transmission must be supported to ensure effective implementation.</li> <li>The 30-day comment period is insufficient for complex regulations. Extend to 60 days to ensure meaningful stakeholder input</li> </ul>	<p>The Minister's power to deviate from the IRP/TDP should require concurrence from NERSA and relevant Parliament's Portfolio Committee, ensuring accountability.</p>

### Cross Border Transmission Capacity

- A progressive and well-considered provision. However:
  - Alignment with the **Electricity Regulation Bill** and international treaties such as the SAPP protocols is necessary to harmonize regional standards
  - Licensing of cross-border infrastructure must be transparent and inclusive of regional development frameworks.
  - Mandate parliamentary ratification of intergovernmental agreements.