

**Independent System and Market Operator Bill  
[Bill 9-2012]**

**List of Comments**

Organisation	Comment	Sec	DoE Response	Suggested Action
Prof Eberhard, UCT	1. ISMO should be responsible for generation planning, Minister has right to intervene	Sec 4(1)	IRP Ministerial/DoE responsibility – policy prerogative- ISMO has large input into IRP and responsible for scenario planning, also inputs for Tx planning	None
	2. ISMO should be able procure new generation capacity and not only purchase function	Sec 4(3)	Minister makes a determination for procurement of long term generation capacity in terms of ERA and ISMO will be responsible for actual procurement of long-term generation capacity. As part of its normal on-going functions ISMO will also be able to procure other types of generation (eg as part of ancillary services)  For Tx purposes ISMO needs to be able to provide input into transmitter planning and procurement and have a say from a system operator perspective into Tx developments	None
	3. Integration of planning, procurement, purchase, dispatch and selling	Sec 4(1) to sec 4(4)	The aim of the ISMO Bill, together with associated legislation such as the ERA, is to provide for such integration. ISMO will be responsible for the technical part of the plan whilst the Minister will be responsible for the policy element. The Minister must be responsible for consultation with the public on the draft plan and gazetting thereafter.	Enabling regulations in ISMO Bill to facilitate transitional/implementation issues in order to ensure integration of functions can be enhanced
	4. Transparent criteria for		IRP and sec 34 of ERA process,- not an ISMO	None

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	allocating new build between ESKOM/IPPs		matter	
	5. IRP should not be absolute but rather indicative		This is a regulatory issue dealt with under ERA. IRP should provide sufficient surety for investment decisions to be made. The ERA provides for deviation from the plan through Ministerial approval. However, it is critical not to undermine the plan through deviation. Deviation from the plan need to be guided by certain principles such as security of supply	None
	6. Transparent criteria for unsolicited bids needs to be defined		Unsolicited bids must not undermine the constitutional principles such as transparency, fairness and competitiveness. The Minister is obliged to honour these principles with regard to purchasing power. The ERA regulates the procurement of power hence it will be appropriate to deal with matters pertaining to unsolicited bids under such Act	The proposed ERA amendment intends to address procurement framework which may cater for unsolicited bids.
	7. Large customers able to contract own generation and wheel over grid	Def of customer, section 4(3)	It is not ISMO responsibility to regulate wheeling but the regulator under the ERA. It is noted that the ISMO Bill should not prohibit such arrangements.	Need to ensure that ERA provides for this opportunity, Minister defines customer categories by notice in the Gazette
	8. Role of NERSA in term of new generation clarified		Nersa will play a significant role in regulating ISMO in terms of its functions which include planning to a certain extent. However, Nersa may not be involved in procurement but it is important to align the procurement and the licensing frameworks.	None for ISMO purposes
	9. Tx function should also be transferred to ISMO – international practice	Sec 4	Agreement that transmission should vest ultimately independently of generation – it has however not yet been decided where	None

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			transmission should be vested (ie ISMO or another independent entity)	
Competition Commission	10. ISMO Customers need to be identified	Def of customer	General agreement that all transmission customers will become ISMO customers, save for willing buyer/willing seller arrangements and generation for own use. However, other customer categories that will become ISMO customers still need to be addressed, hence the need for Ministerial determination thereof. Accepted that there are various issues relating to customers and the transfer of customers and related agreements to ISMO (eg forcing customers to purchase from ISMO, splitting of contracts between energy and transmission services, dealing with existing long terms contracts) that need to be addressed, hence the Bill needs to ensure that this can take place	Minister to define ISMO customers prior to ISMO being fully implemented/operationalized in order to ensure necessary clarity, enabling authority in Bill should be included to issue regulations into contractually related issues in order to ensure that ISMO has statutory mandate and powers to address customer/contract issues
	11. Clarity is needed on ownership of the Tx grid	Sec4 (ISMO functions), sec 40 (transfer of assets)	It is clear that ISMO will not at this stage own the grid. NERSA should ensure regulatory rules to address IPP concerns on grid access re a level playing field as Eskom will be owner of the grid and generator	None
	12. Access to Tx grid needs to be regulated	Sec 4	Primarily a NERSA responsibility to ensure compliance by licensees and access to the grid under ERA – this issue is presently being addressed by NERSA. For system operator related access issues ISMO will be guided by its licence and the Grid Code	Amendment to ERA should take this concern into account.
EGI-SA	13. Clarity on the future power sector is needed and how this will be empowered to oversee, control	General	The Energy White Paper provides for competition in the energy sector. ISMO intent to introduce such competition within	None

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	and regulate the sector		a sector dominated by a state owned entity.	
	14. ISMO needs to operate as a not for profit organisation	Chapter 5	ISMO will be signing agreements with IPPs, therefore it should be financially viable. ISMO requires a credible balance sheet for IPP to regard it as bankable.	None
	15. Tx should be shifted from Eskom to ISMO	Sec 4	Addressed in point 9 above	None
	16. Self-dispatch should be provided for (eg. small renewable)	Sec 4	Not all renewable energy operates on a self dispatch basis. The licence and the PPA between the generator and ISMO should deal with the matter in line with the contracted technology.	None
Project 90 by 2030	17. Endorsement of Bill		Generally the Bill is endorsed by most parties that provided comments	None
Eskom	18. Clarity of end-state needed – industry cannot be restructured in a vacuum	General	The Energy White Paper is clear about the end state of the electricity sector. See DOE presentation.	None
	19. Phased approach – controlled restructuring	General, sec 4, sec 40, sec 41	The ISMO Bill is structured with a phased approach in mind (e.g. transfer of assets and staff)	Inclusion of wording to this effect in section 41, including regulations allowing for the transfer of functions in a phased-in manner
	20. ISMO already being ring-fenced within Eskom- could become ISMO		It is not necessary to link ISMO to an Eskom subsidiary. Some of the functions such as procurement and planning are currently done by government and can be transferred directly to ISMO. Eskom may ring-fence the remaining functions with a view of transferring them directly to ISMO	None
	21. Framework to ensure financial stability of ISMO needs to be in place prior to ISMO being operationalized	Chapter 5	Noted and agreed – purpose of Chapters 5 and 7 is to ensure this. National Treasury agreed to provide the needed financial support to ISMO to ensure financial stability. Note that this legislation does not provide for the transfer of Transmission assets.	A business case for ISMO will be developed in consultation with National Treasury to ensure the financial stability of ISMO prior to its operation. Such business case must be approved by National Treasury

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	22. Criteria for asset values need to be developed (eg market value)	Sec 40	Noted – the compensation framework for Eskom will have to be discussed within government.	Due diligence will be conducted on ISMO with regard to the impact associated with the transfer of assets to ISMO. Based on the outcome of the due diligence study, government in consultation with Eskom, will have to decide on the form of compensation required for Eskom
	23. Clarity regarding customers – who are ISMO customers?	Def section	Please see point 10 above. Bill will only become operational once regulations on ISMO customers are in place.	Please see point 10 above
	24. Increased complexity of contracts transferred to ISMO – split between energy and network services (two parties) – needs to be provided for, customers compelled to purchase energy from ISMO	General	Noted – please see point 10 above	General regulatory authority by Minister to issue regulations ensuring smooth transfer of contracts and addressing contractual issues
	25. Transfer of employees – LRA sufficient & clause can be deleted in this context	Sec 40	Section 40 to be amended, the LRA will be used as the guide for the transfer of employees	Section to be deleted accordingly and reference to the LRA will be made with regards to the transfer of employees
	26. Governance – Bill deals with issues that are adequately dealt with in PFMA and Companies Act, or in the Memorandum of Incorporation	Chapter 4, 5	Noted – however, ISMO provisions are not contrary to Companies Act and PFMA.	None
	27. Takeover of Eskom subsidiary should be authorised, with exemption from taxes and other charges	Section 40	See point 20 above	See point 20 above
	28. Definitions need to be aligned to Companies Act, ERA and codes (ancillary services, grid Code, integrated power system, split of	Def section	Definitions will be aligned – Grid Code needs to be checked for alignment, ERA definitions may need to change in terms of proposed ERA amendments to follow	A number of definition will be reviewed such as “generation licensee” and “Integrated Transmission System” . It is important to ensure that the ISMO Bill does not depend on

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	ISMO customer definition between buying and selling and not combined, national control centre)			new definitions under ERA. IMSO should stand on its own in terms of definitions that are currently not approved in terms of the ERA.
	29. Objects of Act- delete "maintenance and" from section 2(f), dispatch and tariff aggregation should be separated in section 2(h) – already mentioned in 2(g)	Sec 2	2(f) – agreed 2(h) – will be changed accordingly. Remove "manages electricity dispatch and" replace with "is responsible for"	Changes will be made accordingly.
	30. ISMO functions – proviso that all functions align with Grid Code, general catch- all provision to be provided in order not to limit ISMO functions – exhaustive list not always possible, sec 4(1)(b) should refer to "transmission operators" rather than "transmitter", 4(2)(c) -total cost is minimised and not optimised to reduce losses, 4(2)(f) "dispatch" schedules should be changed to "dispatch rules", 4(2)(j) – refer to SAPP utilities rather than adjacent control areas, add "as far as reasonably possible" to 4(2)(l), 4(2)(q) and (r) potentially better dealt with in Grid Code	Sec 4	Agree  Add catch all proviso 4(2)(u) – "perform any other functions as may be required in accordance with the Grid Code."  Add "in accordance with Electricity Regulation Act' to s 4(3)(a)	General catch all function added to provide for further functions should need arise  4(1)(b), the transmitter has been defined and it should alleviate the concern raised.  4(2)(c), section seems fine  4(2)(f) accepted, section will be changed accordingly  4(2)(j) not accommodated, there might be other adjacent control areas that are not a member of SAPP  4(2)(q) and (r) not accommodated
	31. ISMO fees and charges – refusal to supply ISMO customer on non-payment should include power to instruct network operator/owner to disconnect	Sec 32	Issue preferably to be addressed contractually	None, it may be address under this Bill or though contracts between ISMO and its customers

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	customer, provide for eventuality that if network owner disconnects what happens to energy supply as contracted			
	32. Asset transfer – clarification how assets transferred will be paid for, and what to do with liabilities attached thereto, that Eskom need to be paid for seconded employees, effect of LRA on employee transfers needs to be considered	Sec 40	Agree	There is need for further discussion at the government level and agreement on the form of compensation and the liabilities thereafter. The due diligence studies will assist in understanding the kind of liabilities associated with the assets.
Meridan Economics	33. Six key functions need to be considered for ISMO – planning, allocation, procurement, wholesale market operations (buyer), system operations, transmission – ISMO Bill presently only addresses procurement, the buyer and system operations, and it needs to address all six	General	See points 1, 2 and 9 above	None
RES	34. “Transmitter” and “expansion plan” not defined	Sec 4(1)(b)	Noted	Add def of “transmitter”, change ‘the’ expansion plan to ‘expansion plans’
	35. Operating system in “efficient way” not defined – could cause confusion	Sec 4(2)(a)	Need to be some scope for ISMO discretion in terms of how it will perform its functions	None
	36. Objective of optimisation of “real and reactive power flows to reduce losses” incomplete	Sec 4(2)(c)	The section seems in order in relation to the comment raised	None
	37. Who decides ‘acceptable level of reliability’	Sec 4(2)(p)	The regulator under ERA must decide on the acceptable level of reliability. The regulator is required to develop codes which may	None

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			include quality of supply related matters	
	38. Not clear who is responsible for expansion planning of the Tx system, how ISMO should exchange information	Sec 4	Transmitter will be responsible for expansion of the transmission system whilst ISMO will be required to make inputs into the expansions plan in accordance with the required MW under the IRP.	ISMO needs to be given appropriate powers to influence network expansion
	39. No requirement for non-discrimination between users	Sec 4	ERA deals with this issue	None
	40. Clarification that generators outside of South Africa are not licensees	Sec 4(3)(d)(i)	Agreed	Generation has been deleted; the section now refers to licensees. With regards to import, a trading license will be required in terms of the ERA. The importer will have to deal with the generator outside the country through its contractual arrangements
	41. Efficiency not defined	8(3)(a)	Regulatory issue, it will be difficult to define efficiency in this Act. However, the ERA may provide some element that might constitute efficiency which the regulator must address under the licence conditions. Efficiency may be improved from time to time hence need not to be legislated.	None
	42. Non-executive directors should have sufficient time to perform functions	13(4)	The contract for non executive director can be renewed but it cannot be longer than 8 years. This is a standard practice in such positions.	None
	43. Normal costs needs to be defined	32(1)	The revenue for ISMO will be regulated by the regulator in accordance with the ERA. Therefore standard cost need to be determined by the regulator in line with ERA in this regards.	None
	44. Will this contract be open and visible?	41(2)	Depends on what proprietary information is contained in the agreement. Information which is not commercially sensitive can be	None, this matter will be addressed under the ERA amendment



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			made available to the public. ERA requires the regulator to disclose information provided is not commercially sensitive.	
Chamber of Mines	45. System operator – not clear if ISMO will own national grid – if not, ISMO will be in an invidious position. ISMO can only be truly independent if ownership of grid is in hands of entity that is independent from any generator	Sec 4	See point 9 above	None
	46. What will the criteria be for exempting generators from selling to ISMO? Clarity needs to be provided explicitly that independent generators may sell directly to contracted customers	Def of customers, sec 4	See points 7 and 10 above	See points 7 and 10 above
	47. What criteria will be used for defining ISMO customers, and how will existing Eskom contracts be affected?	Def of customers, sec 40	See points 7 and 10 above	See points 7 and 10 above
	48. Powers of entry and inspection – purpose not clear, duplication of ERA powers of licensee	35(1)(a)	ISMO is a statutory body in its own right and functions in terms of its own enabling legislation	None
	49. Transfer of Assets – clause needs to be reworded to make it clear what assets are to be transferred to ISMO	40	Purpose of clause is to provide sufficient scope that detail can be decided at a later stage -not possible to have exhaustive list at this stage	None, a provision under section 39, allowing the Minister to develop regulations related to the transfer of assets will be added.
	50. Recommended that “department” is defined as “Department of Energy”	Def section	The term “department” is also defined as the Department of Energy	None, drafting style, this change may have no impact to the context.
NUMSA	51. By way of conclusion, NUMSA notes that it still needs to		Noted	The Bill has no impact to the establishment of socially owned renewable energy. However, the

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	examine the impact of the Bill on its goals to build a socially owned renewable energy sector			procurement approach is explained in detail under the ERA
NERSA	52. Definitions – add “dispatching” – as defined in ERA, “distribution power system” – align with ERA, “family member” – align with ERA, “integrated power system” - introduced in ERA, “tariff” – align with ERA, “transmission power system” – align with ERA	Sec 1	See point 28	See point 28
	53. Add function 4(2)(u) – “order the interruption of supply in times of power shortages”, 4(3)(d)(i) – clarify purchases from electricity generators outside RSA	Sec 4	Noted	This section has been redrafted to add the input as provided.
	54. ISMO Management - sec 17(2) -add “voting”, sec 18(1) – remove “concurrence”, sec 18(1) – add (d) – provide for a risk committee, sec 19(1) – add “serving voting” to members	Sec 17(2), 18(1), 19(1)	Noted, all board members will have voting right hence it is not necessary to emphasise such right in the Bill	17(2) not accommodated, adding this section will not have a different meaning to the Bill.  18(1) not accommodated, to minimise cost, it is imperative for the Minister to monitor the committee established by ISMO.  19(1) not accommodated, adding “voting” will not give the content of the Bill a different meaning.
	55. ISMO Staff – sec 20(2) – add “consider applications received”, sec 21(1) – add “Board” to end of sentence	Sec 20(2) and 21(1)	Accepted	20(2) The wording of the Bill to take into consideration the comments raised. The word “consider applications received” to be added at the end of the sentence.

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				21(1) not accommodated, it is not necessary to add board at the end of the sentence. This is a drafting matter.
	56. Funding – opinion that ERA has no provision to terminate service to a customer and hence ISMO Bill should reflect that	Sec 32(2)	A licensee can terminate services if a customer fails to honour an agreement, hence ISMO Bill not contrary to ERA. ISMO customers not end users as contemplated in ERA	None, this can be addressed through contract between the customer and ISMO. ERA also provides for termination related to non-payment.
	57. Offences and Penalties -Add “authorised” in 38(1)(f), align penalty amounts to ERA – sec 38(2)	Sec 38(1)(f) and 38(2)	ISMO is an entity in its own right and hence penalties do not necessarily need to align – sanctions and remedies will be mostly contractual	None
EIUG	58. ISMO jurisdiction – “integrated power system” not well defined, could include municipal systems, “system” and “integrated power system” used interchangeably in Act	Def and Bill in general	It is true, the “integrated power system” include municipal infrastructure.	None, it is not clear why municipal system should be excluded from the definition. As much as municipalities have their own control centres, they should work closely with ISMO because the system is linked.
	59. ISMO Customers – not defined in Bill – not clear what categories will be able to sell directly (eg “own use” and “contestable customers”) – ISMO customers need to be clearly defined in Bill itself in order to clarify eligibility criteria	Def section, sec 4	See points 7 and 10 above	See points 7 and 10 above
	60. Objectives – mix between objectives and functions – objectives mission statement with functions building on that	Sec 2	Balance is correct	None
	61. Transmission expansion – ISMO powers limited & cannot force Tx owner to expand system	Sec 4	ISMO will not own the Tx hence should not have powers to contract the lines. However, the need for independent Tx is noted and	See points 2 and 9

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	- ISMO should have power to call for new generation capacity and construction of associated Tx assets - ISMO should be allowed to contract for new Tx should need arise		will be dealt with in due course.	
	62. Tx ownership - door should not be fully closed that ISMO should own Tx - also ISMO would need to ensure equitable access and hence needs powers to do so	Sec 4	Noted, See points 9 and 12	See points 9 and 12
	63. Electricity procurement - ISMO should not only be bound into IRP and ERA procurement processes as it will need to also purchase power otherwise, eg balancing, imports, hence ISMO should also be able to purchase in terms of its own purchase processes	Sec 4	See point 2	See point 2
	64. Tariffs - It is envisaged that all ISMO tariff will be subject to NERSA approval - this is not correct for willing buyers/willing sellers, but should only apply to captive customers	Sec 4	Willing buyer/seller tariffs will not be approved (but PPA will be approved by NERSA). ISMO purchases will be approved (PPAs) All ISMO sale tariffs will be approved by Nersa	None, ERA issue. This matter needs to be addressed under the ERA amendment
	65. Acceptance of ERA as already amended - the ISMO Bill assumes the ERA has already been amended, which is not the case. The ISMO Bill should as far as possible stand "on its own feet"	Bill	Noted and agreed - section 4(3)(d) refers to generation licences exempted from selling to ISMO in terms of ERA whilst ERA does not presently contain such provisions	<a href="#">Suggested amendment to section 3(d)</a>
	66. Transitional provisions -	Sec 40	Noted	This will be addressed through regulation. It is

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	ISMO functions can be performed indefinitely by Eskom –need to be boundaries/checks – otherwise why have an ISMO?			imperative to have a phased in approach in the transfer of functions to ISMO
	67. ISMO governance – no need for new principles if Companies Act and PFMA already deals with issues	Sec 10 onwards	See point 26	See point 26
	68. ISMO Board – Is 9 members too much – specialist organisation	Sec 10	Noted	None
	69. Board mandate – need to be clarity that Board is responsible for policy and oversight, staff for implementation	Sec 12	Noted	None, the section provides for implementation by the staff under the leadership of the CEO
	70. Broad nomination committee - ISMO is a specialist organisation	Sec 13	Noted, there is a preference for a board with specific skills as outlined in the Act	None
	71. Non-south Africans not Board members	Sec 15		None
	72. Fiduciary duties – already covered in Companies Act – not needed	Sec 16	Noted The provisions are aligned with the Companies Act thus not being excluded but for the purposes of this entity its fiduciary duties are set by this bill.	
	73. Quorum requirements too high – difference between quorum and decisions – depends on type of decisions taken – Companies Act already provides for this, and should be taken up in Memorandum of Incorporation, not Act itself	Sec 17	For the board to take effective decisions, most of the members must be available hence the quorum is high.	None
	74. Delegation – consider if cannot be left to board to decide,	Sec 18 and 19	It is up to the board to decide with regards to delegation. However, the board remains	None

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	also not clear what Board powers are that can be delegated		accountable for all the functions despite the delegation	
	75. Unclear why Board must get Minister's approval for appointment of CEO	Sec 20, 21	The Minister will be the shareholder in this entity hence must approve the appointment. This is the case with SOC	None
	76. Conditions of service – concurrence of both Ministers impractical. Consultation should be sufficient	Sec 27	Noted, it is not impractical, given the amount of guarantees that may be provided by the Minister of Finance in this entity, it is imperative to request such approval	None
	77. Ministerial intervention in ISMO accepted –but ISMO is a commercial entity and hence its commercial decisions should not be not administrative-law based with “fairness” and “equitability” a complaint factor/ground for intervention in commercial situations – see sec 37(1)(c).	Sec 37	Agreed	Section 37(1) amended
	78. ISMO should be a viable entity – key to this is customer base – hence need to clearly define customers	Chapter 5	See point 10 above	See point 10
	79. Transitional provisions – limited mostly to asset and staff transfers, without much detail on how existing contracts, should be dealt with, or what licences ISMO should be issued with in terms of the ERA – suggested that a general section be included empowering the Minister to make transitional regulations aimed at dealing with issues as they arise	Sec 40/41	Agreed	Sufficient enabling regulations making powers for Minister to ensure that implementation issues that arise around asset and staff transfer, customer contracts and transfer of customers as well as detail issues that are unknown at present can be dealt with – section 39(1)

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Energy Research Centre	80. Planning, allocation and transmission not allocated to ISMO	Sec 4	See points 1,2 and 9 above	None
	81. Transparent criteria for allocating new build between Eskom and IPPs needs to be developed	Sec4	See point 2 above – Ministerial function in terms of ERA	None
	81. Integration of planning and allocation of grid access, transfer of Tx to ISMO	Sec 4	See points 3 and 9 above	
	82. Technical Board should engage with civil society into functions (eg planning)	Sec4	The Minister will do the consultation with regards to the planning for new generation capacity whilst ISMO will conduct the procurement process in accordance with ERA and other prevailing legislation in this regard such as the PFMA.	None
	83. Imports and exports – ISMO need to consider other obligations and agreements eg. Climate change	Sec4	Yes, ISMO will have to be regulated by the environmental legislation in this regard. The department will also develop and import policy to guide ISMO in terms importing power into the country. This policy will take into account issues of climate change.	None
SECCP	84. ISMO should not be profit making body		See point 14	None
	85. Unbundling of generation and Tx tariffs		Yes, NERSA function in terms of ERA. This needs to be done in a phase-in approach. The current focus is to make ISMO independent and the unbundling of tariffs will follow later. The pricing policy will have to be revised to cater for this requirement.	None, After the establishment of ISMO. There will be a need to deal with the unbundling of tariffs in accordance with the energy white paper. The pricing policy needs to be revised to address this.
	86. Who will fund FBE		ISMO does not supply end customers entitled to FBE – distribution level issue.	None

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			Therefore the removal of ISMO from Eskom will not have an impact on the provision of FBE	
	87. How will existing contracts be dealt with	Sec 4,	See point 10 above	See point 10 above
	88. ISMO tariffs need to be in the public domain		Purchase tariffs – PPA approval process under ERA, sales tariffs – setting and approval process under ERA	None – not ISMO issue
	89. Disclosure of conflicts		Dealt with in terms of ISMO Bill, Companies Act	None
	90. Parliamentary intervention if ISMO maladministration	Sec 37	Minister performs shareholder role whilst Parliament playing the oversight role	None
	91. ISMO Bill depends on ERA and National Energy Regulator Act – these are unconstitutional, and hence should be dealt with first before ISMO in order to prevent ISMO being undermined		The ISMO Bill stands on its own legs and is mostly not linked to the other Acts, where definitions etc are not the same these can be adopted in the ERA and/or the National Energy Regulator Act	Amendment to the definitions to ensure that ISMO is independent from ERA and NERA
	92. ISMO should enable net metering for micro-generation		Nothing prevents ISMO from doing so in future. However, most of the micro-generation will take place at the distribution level and it might be necessary to contract with distribution	None
SAFCEI	93. Physical infrastructure should be transferred to ISMO	Sec 4	See point 9 above	See point 9 above
	94. Need for greater oversight and public participation in ISMO plans	Sec 4	Consultation in the generation planning process will be done by the Minister with ISMO providing the required technical support.	None
	95. Need for understanding of oversight processes between Minister of Energy and Public Enterprises		The Minister of Energy will be the shareholder in ISMO whilst the Minister of Public Enterprises will continue to be the shareholder in Eskom. It is important for	None



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			ISMO to be independent from Eskom even in terms of reporting	
	96. ISMO should be a state entity and not a company		ISMO is a fully state-owned entity incorporated as such in terms of the new Companies Act	None
WWF (Key comments)	97. In absence of electricity market structure ISMO would have limited benefit		See point 13	See point 13
	98. Time lines for transition of ISMO functions unclear	Sec 40,41	Issues to be dealt with as part of ISMO business plan, Ministerial determination of customer categories and implemented in terms of sections 40 to 41	Bill to include sufficient enabling regulation making powers for Minister to ensure that implementation and transition issues that arise around asset and staff transfer, customer contracts and transfer of customers as well as detail issues that are unknown at present can be dealt with – section 39(1). This can include the possibility to determine timelines.
	99. ISMO is not independent from Government	Sec 3	ISMO is a state owned company and hence the Ministers role is limited to appointment of Board members, intervention when being maladministered, shareholder role, and overall government policy determination. Independence from market players not government.	None
	100. Board of ISMO should be mandated to establish stakeholder consultation processes and involvement, report back to stakeholders	Sec 18	Nothing prevents ISMO from doing so – however, not mandatory.	Noted
White and Case	101. The Bill should specify parameters to be used by Minister for determination of customers, i.e. technical parameters (size of customers	Def section	The Minister will specify customers by notice in the Gazette – see point 10 above. Agreed that parameters such as these would need to feed into Ministerial notice	See point 10

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	installation, energy consumed, where vested on grid), financial parameters (cost of connection equipment, strengthen the grid), national strategic parameters (e.g. national key points)			
	102. Denying a customer wholesale access should be consistent with parameters to ensure it is objective, reasonable and fair	Def section	See point 10. Any person not agreeing with the Minister's determination would be able to follow legal process for recourse	None – will be addressed in Government notice
	103. In the event that an IPP and ISMO cannot reach agreement, such IPP can only sell to another customer with the Minister's permission as per the ERA Bill and ISMO Act – hence Minister can by defining customers preclude ISMO from selling to anybody else	Def section	ERA issue – ERA addresses buying and selling of power by IPPs, not ISMO	None – customer base (who ISMO can sell to, who ISMO must sell to and who IPPs can sell directly to) will be addressed in Ministerial customer determination notice
	104. Section 37(1)(d) read with 37(4)(c) and 38(1)(c) criminalizes non-compliance with policy, whilst policy is neither law nor subordinate law	Sec 37, 38	Not the intention to criminalize non-compliance with policy – remedy is replacement of Board by administrator	Section 37 and 38 adjusted accordingly
BUSA	105. Need to ensure effective and efficient transfer of functions to ISMO	Sec 40 -41	See point 98	See point 98
	106. Need to ensure alignment between ISMO Bill, ERA Amendment Act and NER Act		See points 28, 65 and 91	See points 28,65 and 91
	107. ISMO's approval in Parliament should await for the		Agreed, impact assessment study will be conducted before the implementation of the	None, there is no need to amend the Bill but the study on impact will be conducted before the

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Organisation	Comment	Sec	DoE Response	Suggested Action
	study on impact on electricity costs that ISMO will have – agreed by NEDLAC		Act. Any impact that is identified will be addressed accordingly	operationalisation of the Act
	108. Not clear who ISMO Customers will be	Def section	See point 10	See point 10
	109. “Market operator” not defined – rather use “trader”	Sec 4(2)(k) and 4(3)	Agreed, definition will be included	The definition of the market operator must be added accordingly.
	110. Reference in section 4(3(j) to NERSA needed	4(3)(j)	Nersa must approve tariff hence reference is made in this regard	None
	111. Need for subsidiaries & cost thereof questioned	Sec 6	Agreed, the section about subsidiaries will be removed accordingly	The Bill to be amended to remove subsidiaries.
	112. Not clear why sec 37 process of intervention is required	Sec 37	Standard practice for new SOE’s	None
	113. Offences and penalties – actions against employees should be dealt with via labour legislation – not criminalised	Section 38(1)(a), (b) and (c)	Agree in principle	Sections modified
	114. Minister should be obliged to publicly consult on regulations and policy before promulgation thereof	Sections 39(1) and (2)	Agree in principle	Add “invite public comments and duly consider such comments” in 39(1) and (2)
	115. Sec 40(1)(a) wrong wording – “on the effective date and within the time period determined by the Minister” – impossible – delete “on the effective date”	Sec 40(1)(a)	Agree	Sec 40(1)(a) amended
	116. Sec 40(4) – transfer of staff as per the LRA – agreed in NEDLAC	Sec 40(4)	Agreed, section will be amended. Reference to the LRA will be made with regard to the transfer of staff in section 40 of the Bill	Section 40 to be amended, section covered by the LRA will be removed. The Bill should only refer to the LRA with regard to the transfer of staff.
	117. “effective date” date when ISMO established as SOE –	Sec 41(1)	This is the intention of section 41	This section is covered under regulations to allow for the phased-in approach as

Commented [m9]: Not captured in the A Bill

Organisation	Comment	Sec	DoE Response	Suggested Action
	impossible to take over functions then – phased approach need to be provided for			recommended.
	118. Not all functions need to be performed by Eskom	Sec 41(2)	Agreed	Wording clarified
	119. Provide for phasing of functions - add wording “provided that the transfer of functions may be phased”	Sec 41(4)	Agreed	Wording provided for in the regulations
NEDLAC Supplementary Report (key issues)	120. Define “procure” and “procurer” – must have same meaning as “procure” in new generation regulations	Def	ISMO will have its own procurement processes, subject to Constitution and PFMA	None
	121. “effective date” -phased approach should be possible to establish ISMO	Def	This is what sect 40 and 41 set out to do – see point 117	See point 117
	122. “trading” should be used in the Bill and not used interchangeably with “buy and sell” - however, if use of “buy” and “sell” is needed, then should be used consistently	Def	Bill checked to see if terms used consistently	Bill to be checked for consistent use of terms
	123. Change “Government policy” to “policy determined by Minister”	Sec 2(b)	Government policy correct reference. ISMO may be required to comply with other policies from other department.	None
	124. Section 3 does not articulate the desired objectives of ISMO	Sec 3	Technical establishment clauses that has no effect on objectives	None
	125. Delete “international best practice” in 4(2)(l)	Sec 4(2)(l)	The Grid Code would give effect thereto, there is no need to refer to international best practice. The grid code will be updated in accordance with international best practice.	None
	126. Align terms in ISMO Bill with	Sec	See point 28	See point 28

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Organisation	Comment	Sec	DoE Response	Suggested Action
	ERA	4(2)(m)		
	127. Terms of old Bill must be reinstated	Sec 4(2)(q)	Noted, certain definitions have been revised accordingly	Changes has been made in certain definitions to ensure alignment
	128. Add "...consistent with the IRP and the ERA."	Sec 4(3)(a)	Already in (3)(d)	None
	129. Delete 4(3)(d)(ii)	Sec 4(3)(d)(ii)	See point 128	None
	130. Reinstate original text on memorandum of incorporation	Sec 5(2)	The content can be introduced into the memorandum itself	None
	131. Clause on subsidiaries to be removed	Sec 6	Agreed	Section on subsidiaries will be removed accordingly
	132. Board vacancies must be filled in six months	Sec 13(8)(a)	Agree	SLA to amend clause to reflect that vacancies must be filled in six months
	133. Add "applicable labour legislation"	Sec 26(1)	This speaks for itself - ISMO will have to comply with all labour law	None
	134. Eskom staff must be transferred in terms of LRA	Sec 26(2)	This speaks for itself - the current provisions are not contrary to the LRA	None
	135. Conditions of service - add "applicable labour laws"	Sec 27(1)	This speaks for itself - ISMO will have to comply with all labour law	None
	136. Delete words "proclamation No 103 of 1994"	Sec 27(4)	SLA prerogative - this is the correct wording for referencing laws	None
	137. Inspection powers should be dealt with by notice in the Gazette	Sec 35	Law itself need to vest this power	None
	138. Offences and penalties - do not criminalize actions of employees as opposed to third parties	Sec 38	See point 113	See point 113
	139. Minister must invite public comments on regulations and policies prior to promulgation	Sec 39	See point 114	See point 114
	140. Delete 40(4) to (9) - paraphrasing of LRA	Sec40 (4) to (9)	Agree	Section has been deleted accordingly, reference to the LRA made
	141. Provision must be made that	Sec 40 and	See point 117	See point 117

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Commented [m15]: This section might not be in the A Bill

Organisation	Comment	Sec	DoE Response	Suggested Action
	functions can be performed in a phased manner, details of which should be published by the Minister in the Gazette	41		
	142. Before staff and assets are transferred, the effect thereof on Eskom's balance sheet and electricity prices must be determined	Sec 40 and 41	Agreed, the socio economic study will be conducted before the implementation of ISMO	None, there is no need to make such reference in the Bill