



Department of Energy

Presentation to the Parliamentary
Portfolio Committee

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Background



Regulation

- Ensure proper service delivery in a monopoly environment
- Protects captive customers
- Ensures that a service provider charges justifiable tariffs and that it is sustainable
- Provides a discussion platform for both the consumer and the service provider

Energy Regulator

- Regulates electricity, petroleum pipelines and piped gas
- Sector has limited competition
- Regulates the provision of service to captive customers within the energy sector in accordance with its mandate
- It is a custodian of the ER Act, Piped Gas Act and Petroleum Pipelines Act



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Background cont'd



Integrated Resource Plan

The Act provides for the development of the IRP by national sphere of government

Section 34 (3) requires the regulator to license according to the IRP

Determination

- The Minister is required to make a determination under section 34 of the Act
- The Minister must determine the Buyer, Seller and the type of energy to be used in generating electricity

New Generation Regulations

- Outlines the process for developing the IRP
- Provides linkages between the determination and IRP which is not clearly outlined in the Act
- Outlines the procurement framework for new generation capacity



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Electricity Regulation Act



Electricity Dispatch

- The Act does not provide for licensing of dispatch yet it is critical for IPP participation
- The regulator currently covers dispatch under the Transmission license

Trading

- Trading is regarded as buying or selling of power
- The definition is very broad hence there is a need to streamline it

Expropriation

- The Act provides for the Minister of Public Works to expropriate land for electricity infrastructure
- The Minister is required to provide recommendation to the Minister of Public Works on requested expropriation by a licensee



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Proposed Amendments to the Electricity Regulation Act (ERA)



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IRP and Determination



Integrated Resource Plan

- A section dealing with IRP has been inserted in the Bill
- The new section, outlines the process for developing the IRP
- The regulator is required to license according to the determination made by the Minister in accordance with the IRP

Determination

- The Minister is required to determine the buyer, the purchaser and type of technology in accordance with the IRP
- The regulator is required to license in accordance with the determination
- Written approval from the Minister is required to deviate from the determination



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IPP Programme and Trading



IPP Programme

- A new section has been inserted outlining the procurement framework
- The regulator is required to align its licensing with the procurement framework

Trading

- The Minister may develop regulations outlining different categories of trading
- The regulator will be required to license in accordance with the regulation promulgated by the Minister



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Tariff Approval

The Regulator on request from the Minister

- May predetermine tariffs for the IPP Programme
- Predetermine license conditions for bidders bidding under the IPP Programme

Transmission Planning

- The Transmission Licensee is empowered to develop a transmission plan
- The plan must be approved by the regulator after consultation with the Minister and the buyer to ensure alignment with the IRP



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Expropriation

- The Minister is empowered to expropriate land for electricity infrastructure on behalf of a licensee
- The costs of expropriation are covered by the licensee
- The regulator may provide technical advice to the Minister on expropriation matters



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Conclusions on Amendments to ERA

- The proposed amendments will:
 - expedite the establishment of new generation capacity
 - provide alignment between the Buyer, Procurer and the regulator
 - Provide more clarity in certain sections of the Act to avoid misinterpretation
 - The Bill was published in the Government Gazette for public comments in December 2011 with the closing date of 17 February 2012
 - The Bill will be submitted to NEDLAC before it is tabled in Parliament



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Proposed Amendments to the National Energy Regulator Act (NERA)



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Background

National Energy Regulator Act of 2004

The Act provides for 4 full-time and 5 part-time regulator members

- Each full-time regulator member is primarily responsible for electricity, piped gas and petroleum pipelines
- Whilst the functions of the CEO as a full-time regulator member responsible for the day-to-day running of the regulator cut across all the different regulated sectors

The Act allows the regulator to establish different subcommittees for purpose of executing the mandate of the regulator

- The subcommittees must be chaired by one full-time regulator member or any other designated person
- Decisions taken by the subcommittee will be regarded as a decision of the regulator and will be binding, i.e. for delegated functions



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National Energy Regulator

Part-time members

Chairperson
plus 4 part-time
members

Full-time members

Elec. Regulator
member

Piped Gas
Regulator
member

Petr.
Regulator
member

CEO

CEO's
operation

Secretariat

Head :
Electricity
Regulation

Head: Piped
gas regulation

Head:
Petroleum
pipelines
regulation

HR, CFO, Corporate
Services, Special
support units



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Analysis of the Act

Conflicting roles between the full-time regulator members

- The relationship between the full-time regulator members and the CEO is not clearly defined
- There are no clear reporting mechanism between the full-time regulator members and the CEO
- The lack of clarity result into conflict between the CEO and the full-time regulator members

The Act allows the regulator to sit as a tribunal

- The role of the regulator acting as a tribunal is in conflict with the Constitution
- It is important for the tribunal to be independent from the regulator to allow stakeholders to appeal against decisions of the regulator



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Objectives

- Reasons for the amendments
 - Improve credibility of the decision making process by establishing an Appeal Board
 - Improve the governance, accountability of the regulator
 - Improve the working relations among the regulator members



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Proposed Amendments to the Act

Independence of the regulator

- The amendment must not compromise the independence of the regulator
- Independent regulator is critical in attracting private sector investment in the energy space and ensure regulatory certainty

Regulator to sit as a tribunal

- The Act should allow for an independent tribunal outside of the regulator
- Stakeholders should have the opportunity to contest the decision of the regulator with an independent tribunal



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Proposed Amendments to the Act cont'd

Establishment of a regulatory commission

- The amendments provide for one full-time commissioner with three deputy commissioners each responsible for a specific sector

Independent Appeals Board

- The amendment provides for the establishment of an independent appeals board
- The appeals board will be part-time and independent from the regulatory Commissioner
- Stakeholders may appeal the decision of the commissioner from the appeals board



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Conclusions on Amendments to NERA

- The energy sector must be regulated effectively given the need to increase private sector participation in this space
- The current challenges facing the energy needs effective governance structure
- The Department proposed these amendments to provide for effective and efficient regulatory framework
- Published in the Government Gazette for public comments in December 2011 with a closing date of 10 February 2012
- Bill to be submitted to NEDLAC for consultation before tabled in Parliament



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