

OUTA

ORGANISATION UNDOING TAX ABUSE

29 April 2024

OUTA comments on the Electricity Regulation Amendment Bill

**Submission by the Organisation Undoing Tax Abuse
to the The Select Committee on Land Reform,
Environment, Mineral Resources and Energy.**

Submitted by:

OUTA

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29 April 2024

To: The Committee Chairperson and Committee Secretary
Select Committee on Land Reform, Environment, Mineral Resources and Energy
National Council of Provinces (NCOP)
Cape Town

C/O: Mr Asgar A Bawa

Per: (Email) ElectricityRegulationAmendmentBill@parliament.gov.za

Dear Sir/ s,

OUTA'S COMMENTS ON THE ELECTRICITY REGULATION AMENDMENT BILL, [B23B-2023]

INTRODUCTION

1. This submission is in response to the call for comments and response by affected parties in respect of the Electricity Regulation Amendment Bill ("ERA Bill") by the Select Committee on Land Reform, Environment, Mineral Resources and Energy, of the National Council of Provinces ("NCOP"), which closes on 29 April 2024.
2. The Organisation Undoing Tax Abuse (OUTA) is a proudly South African, non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. We envision a prosperous country, with an organised, engaged and empowered civil society that ensures responsible use of tax revenues.
3. Part and parcel to OUTA's mission is to review, comment, respond and provide input to draft legislation and regulations affecting public policy, regulation, planning and pricing. This includes participating and engaging with government where public interest is concerned, as is the case with the ERA Bill.
4. OUTA assists its members, supporters and the public in developing public positions based on its engagement programmes, industry research, information dissemination, government liaison and action on legislation.

ABOUT THE SUBMISSION

5. The ERA Bill is undoubtedly key proposed legislation pertaining to South Africa's national medium- and long-term electricity policy, legal, regulatory, planning and pricing framework.
6. The analyses, comments and recommendations contained herein, are based on significant inhouse research, evidence and engagements, as well as the research, policy positions and reports by a number of government departments, government agencies, Eskom, business and industry associations, civil society and non-governmental organisations (NGOs), and other stakeholders.

RESIDENTIAL, COMMERCIAL, INDUSTRIAL, MINING AND AGRICULTURAL ELECTRICITY CUSTOMERS AND THE PUBLIC, FACE MAJOR PROBLEMS WITH RESPECT TO ELECTRICITY SUPPLY

7. In areas served by both Eskom and municipal electricity distributors, residential, commercial, industrial, mining and agricultural electricity customers and the public experience massive electricity supply disruptions caused by:
 - 7.1. Regular occurrences of generation capacity shortfalls by Eskom, resulting from Eskom's high levels of unplanned breakdowns of its generation plant and low energy availability factor (EAF), leading to "load shedding" and "load curtailment" across South Africa;
 - 7.2. Regular occurrences of unplanned power outages caused by distribution system infrastructure and equipment failures in both Eskom and municipal electricity distribution networks. These failures result from: aging and poorly maintained substations, mini-substations, transformers, lines, cables and switchgear; overloading of distribution equipment and circuits due to population growth, illegal connections and electricity theft; vandalism and theft of electricity infrastructure such as copper cables, overhead lines, transformers, steel structures and poles; and general human resource limitations, corruption and mismanagement within municipal environments;
 - 7.3. Regular occurrences of power outages caused by "load reduction" imposed by Eskom on its own direct customers, as well as on municipal electricity distributors that exceed their notified maximum demand from Eskom, and/ or are in arrears with Eskom in respect of

payments for electricity supply. “Load reduction” cuts power to targeted areas during certain hours of the day in order to prevent overloading of distribution networks, and as leverage to get customers and municipalities to pay Eskom. Such “load reduction” is applied indiscriminately, such that even paying customers in the targeted areas are severely impacted.

8. At the same time, residential, commercial, industrial, mining and agricultural customers of electricity and the public experience significant electricity price increases from both Eskom and municipal electricity distributors.
9. All of this is proving massively disruptive to the lives and business activities of electricity customers and the public in both Eskom and municipal areas of electricity supply, with associated inconvenience and loss of revenue, productivity and jobs.

HOW CUSTOMERS ARE RESPONDING TO THE SHORT- AND MEDIUM-TERM ISSUES

10. Residential, commercial, industrial, mining and agricultural customers of electricity and the public are responding to the dire supply interruptions described above, and the critical need for security of electricity supply, in various ways, as follows:
 - 10.1. Installation of petrol and diesel standby generators on a massive scale, with significant up-front capital costs, ongoing fuel and maintenance costs, increased levels of air and noise pollution and CO2 emissions;
 - 10.2. Installation of uninterruptible power supplies and standby battery energy storage systems at significant capital cost. These systems are net consumers of electricity and add to the burden on electricity supply networks as they recharge after some hours of load shedding and other power outages;
 - 10.3. Installation of grid-tied solar PV with battery energy storage, for both self-generation and wheeling of electricity. This reduces the burden on Eskom Generation, and, as such, serves to reduce the impact of load shedding and improve security of supply for all.
11. OUTA believes that there is much that can and is being done by electricity customers and the public themselves to alleviate the dire situation, to provide solutions to these challenges and to take ownership of their own energy futures.

12. However, there is also much that can and should be done by Government, the National Electricity Regulator of South Africa (“NERSA”), Eskom and municipal electricity distributors in the area of electricity policy, legal, regulatory, planning, pricing and structural reform that would make a very significant difference to load shedding, power interruptions and the rapidly rising price of electricity in South Africa in the short-, medium- and longer-term.
13. OUTA therefore urges Government to proceed to liberalise, reform and restructure the electricity supply and distribution industries in South Africa as a matter of urgency, in order to unlock the economic potential of the country and to overcome the electricity supply constraints which serve to inhibit the necessary investments, economic growth and jobs.

OUTA SUPPORTS THE BROAD INTENT OF THE ERA BILL

14. OUTA supports the broad intent of the ERA Bill to provide the necessary policy, legal, regulatory, planning and pricing framework for a restructured Electricity Supply Industry in South Africa, and to align this with the intended restructuring and unbundling of Eskom as detailed in the Eskom Roadmap published by the Department of Public Enterprises (“DPE”) in 2019.
15. This includes the intent of the ERA Bill to facilitate a diversified and competitive electricity generation sector, an independent, state-owned Transmission System Operator (“TSO”), a Central Procurement Agency (“CPA”), an independent market operator (“IMO”), and an electricity market in South Africa.
16. Furthermore, OUTA supports the intent of the ERA Bill to facilitate the liberalisation of the Electricity Supply Industry to enable embedded, distributed and self-generation, wheeling and trading of electricity by commercial, industrial, mining and agricultural customers of electricity.
17. OUTA considers this to be necessary for residential, commercial, industrial, mining and agricultural customers of electricity and the public in order to:
 - 17.1. Reduce dependence on Eskom and municipal electricity distributors, and so relieve them of a burden they are clearly unable to meet, to lower the probability of load shedding and power outages, and to an increase security of supply;

- 17.2. Reduce electrical energy and demand costs, and to ensure a more predictable and lower electricity price trajectory in the years ahead, through the installation of renewable energy and battery energy storage systems by residential, commercial, industrial, mining and agricultural customers of electricity;
- 17.3. Reduce consumption of coal-fired electricity from Eskom in order to lower the carbon footprint of residential, commercial, industrial, mining and agricultural customers of electricity, in order to lower CO₂ and toxic emissions, and mitigate climate change from the burning of fossil fuels such as coal.
18. To the extent that the ERA Bill enables the above by putting in place the necessary policy, legal, regulatory, planning and pricing frameworks, structures, rules and procedures to facilitate the above, OUTA is supportive of the ERA Bill.

BROAD OVERVIEW OF THE ERA BILL, AS SEEN BY OUTA

19. The ERA Bill is considered by OUTA to be extremely important proposed legislation, necessary to:
 - 19.1. Put in place the necessary legal, regulatory, planning and pricing frameworks, rules and procedures to implement government policy for a restructured Electricity Supply Industry;
 - 19.2. Allow for the liberalisation of the Electricity Supply Industry in South Africa, away from a monopoly, vertically integrated, electricity utility (Eskom), and geographic monopolies for electricity distribution (Eskom and municipalities);
 - 19.3. Cater for the restructuring and unbundling of Eskom into separate generation, transmission and distribution entities;
 - 19.4. Allow for and regulate a diversified, competitive generation sector comprising Eskom generators, other public sector generators, public private partnership (“PPP”) generators, municipal generators, independent power producers (“IPPs”), self-generation, and distributed, embedded generation within distribution networks;
 - 19.5. Allow for and regulate the establishment of an independent Transmission System Operator (“TSO”), and to define its roles and responsibilities;

- 19.6. Allow for and regulate the establishment of a National Control Centre (“NCC”) within the TSO, and to define its roles and responsibilities;
- 19.7. Allow for and regulate the establishment of a Central Purchasing Agency (“CPA”) within the TSO, and to define its role and responsibilities;
- 19.8. Allow for and regulate the establishment of day-ahead, balancing, capacity and ancillary services electricity markets in South Africa;
- 19.9. Allow for and regulate wheeling, virtual wheeling and token wheeling of electricity across the grid between electricity generators and users;
- 19.10. Allow for and regulate wholesale or retail buying of electricity by traders for resale to users i.e. trading of electricity as a commercial activity;
- 19.11. Allow for and regulate the import and export of electricity in South Africa;
- 19.12. Defining of licenced electricity activities and those activities exempted from licencing in South Africa;
- 19.13. Provide for licensing and registration of electricity generators, transmitters, distributors and traders of electricity in South Africa, and define the rules for licensing and the exemptions from licensing;
- 19.14. Define the roles, responsibilities and powers of the DMRE Minister, the National Energy Regulator of South Africa (“NERSA”), the Transmission System Operator (“TSO”), the Central Purchasing Agency (“CPA”), the National Control Centre (“NCC”) and the Independent Market Operator (“IMO”);
- 19.15. Define the planning framework, roles and responsibilities for generation and transmission system planning in South Africa i.e. for the Integrated Resource Plan (“IRP”) for electricity and the National Transmission Plan (“NTP”);
- 19.16. Define the generation and transmission procurement framework, roles and responsibilities in South Africa, including public and private sector procurement processes;
- 19.17. Define and regulate the setting of pricing and tariffs by generators, transmitters, distributors, traders, importers and exporters of electricity in South Africa.

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OBJECTIVES OF OUTA IN RESPECT OF THE ERA BILL

20. OUTA's view is that ERA Bill is needed by residential, commercial, industrial, mining and agricultural customers and the public in order to:
- 20.1. Establish the legal and regulatory framework necessary for the liberalisation of the electricity supply and electricity distribution industries, away from the current vertically integrated Eskom monopoly structure, and the geographic monopoly structures of failing municipal electricity distributors. This brings competition, choice of supplier, improved operational and cost efficiencies, and reliability of supply, to electricity customers and the public;
- 20.2. Facilitate embedded, distributed and self-generation by electricity customers, including supply of surplus power into the grid by customers through feed-in tariffs, in order to reduce the burden on Eskom and municipal systems, to minimise load shedding and load reduction, and to ensure security of electricity supply, in an enabling legal and regulatory framework;
- 20.3. Facilitate wheeling, virtual wheeling and token wheeling of electricity from independent power producers ("IPPs") to electricity customers in different geographic areas, in an enabling legal and regulatory framework;
- 20.4. Facilitate trading of electricity as a commercial activity, allowing aggregators and traders to buy energy in bulk from generators, or from the electricity market, and trade the electricity in innovative packages tailored for different customer segments in diverse geographic areas, in an enabling legal and regulatory framework;
- 20.5. Facilitate an independent Transmission System Operator ("TSO") to ensure non-discriminatory, unconflicted grid access on level playing fields by new generation entrants, in an enabling legal and regulatory framework;
- 20.6. Facilitate a competitive day-ahead electrical energy and capacity market, balancing market and auxiliary services market, and an Independent Market Operator ("IMO"), in order to diversify the sources of electricity supply, ensure competition and customer choice, extract cost efficiencies, improve performance of the electricity supply industry, and minimise the electricity price trajectory, in an enabling legal and regulatory framework;

- 20.7. Facilitate a sound electricity planning framework, with regular updates to the Integrated Resource Plan (“IRP”) for Electricity and National Transmission Plan (“NTP”), to provide better power system planning, and reliability of supply at lowest cost;
- 20.8. Facilitate an electricity pricing framework, to provides rational electricity tariffs with lowest costs to residential, commercial, industrial, mining and agricultural customers and the public;
- 20.9. Reduce the Scope 1 (in house) carbon footprint of by electricity customers and the public by minimising the use of diesel and petrol standby generators in an enabling legal and regulatory framework;
- 20.10. Reduce the Scope 2 (off site) carbon footprint of electricity customers and the public by minimising the use of coal- and diesel-fired Eskom/ municipal power in an enabling legal and regulatory framework.

COMMENTS ON THE ERA BILL

21. While OUTA supports the broad intent of the proposed ERA Bill, OUTA makes the following specific comments in response to the call for input from affected stakeholders.
22. OUTA does not intend to comment point-by-point to each of the proposed additions, deletions and/ or amendments in the ERA Bill in a legalistic way. Instead, OUTA intends to respond broadly to the policy, legal, regulatory, planning and pricing principles espoused in the ERA Bill.
23. Some specific yet broad comments of principle by OUTA to the ERA Bill are given below:

23.1. OUTA supports increased policy, regulatory, planning and pricing certainty

- 23.1.1. As a matter of principle, OUTA supports efforts by government to increase electricity policy, legal, regulatory, planning and pricing certainty.
- 23.1.2. OUTA believes that the ERA Bill goes a long way to clarify the intentions of government in respect of the unbundling and restructuring of Eskom, the creation of an independent Transmission System Operator (“TSO”), the establishment of a Central Procurement

Agency (“CPA”), the establishment of an Independent Market Operator (“IMO”), the establishment of a diversified competitive generation sector with day-ahead electricity, balancing, capacity and ancillary services markets, and the facilitation of embedded, distributed and self-generation, co-generation, wheeling and trading of electricity.

23.1.3. As such OUTA broadly supports the ERA Bill in respect of the clarity that this brings.

23.1.4. OUTA believes that every effort needs to be taken to avoid aspects of the ERA Bill that are unclear and open to different interpretations, as any such uncertainty will delay and inhibit the intentions of the ERA Bill, the restructuring of the Electricity Supply Industry, and the uptake of embedded, distributed and self-generation, co-generation, wheeling and trading of electricity in South Africa.

23.1.5. Such uncertainty would then further impede security of supply, jobs, investment and economic growth.

23.2. OUTA supports reducing unnecessary red tape

23.2.1. As a matter of principle, OUTA supports efforts to reduce unnecessary red-tape and unnecessarily restrictive or prescriptive policy, regulatory and planning positions of central government, the minister of Mineral Resources and Energy, NERSA, provincial government, local government (municipalities), municipal electricity distributors, and Eskom.

23.2.2. OUTA supports the streamlining and removal of unnecessary red tape and unnecessary bureaucracy that holds back the private sector, electricity customers and the public from engaging in embedded, distributed and self-generation, cogeneration, wheeling and trading of electricity, from securing of their own energy futures, and from becoming part of the electricity solutions in South Africa, alongside the efforts of government and the public sector.

23.3. OUTA supports the wheeling of power across both Eskom and municipal networks

23.3.1. OUTA supports opening-up of distribution and transmission networks to conventional wheeling, virtual wheeling and token wheeling of power from distributed generators to off-takers, in one-to-one, one-to-many, many-to-one and many-to-many wheeling configurations, between both related and unrelated parties;

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- 23.3.2. OUTA therefor recommends that all clauses in the ERA Bill that serve to unnecessarily prevent, restrict, limit, inhibit or discourage wheeling, virtual wheeling and/ or token wheeling of power across Eskom and municipal networks to residential, commercial, industrial, mining and agricultural customers and the public, be removed or amended;
- 23.3.3. OUTA believes the removal of unnecessary bureaucratic red-tape for wheeling, virtual wheeling and token wheeling will facilitate the uptake of embedded, distributed and self-generation, will relieve Eskom of a demand that it is often unable to meet, and will reduce load shedding, load curtailment and load reduction to ALL customers of electricity;
- 23.3.4. OUTA further supports the establishment by NERSA of a national wheeling tariff framework that enables Eskom, municipal and other network operators to develop cost-reflective wheeling tariffs that are fair and equitable to generators, network operators, electricity customers and the public.

23.4. OUTA supports self-generation, co-generation and supply of surplus energy into both Eskom and municipal networks

- 23.4.1. OUTA supports the facilitation of self-generation and co-generation by electricity customers to supplement their electricity needs, and the supply any surplus energy so generated into Eskom and municipal networks at rational feed-in tariffs that reimburse customers fairly for the energy provided;
- 23.4.2. OUTA therefor recommends that all clauses in the ERA Bill that serve to unnecessarily prevent, restrict, limit, inhibit or discourage self-generation, co-generation and supply of surplus energy by electricity customers into Eskom and municipal networks should be removed or amended;
- 23.4.3. OUTA believes the removal of unnecessary bureaucratic red-tape that inhibits self-generation, co-generation and supply of surplus energy into Eskom and municipal networks will facilitate an increased uptake of self-generation and co-generation, will relieve Eskom of a demand that it is often unable to meet, and will reduce load shedding, load curtailment and load reduction to ALL customers of electricity;
- 23.4.4. OUTA further supports the establishment by NERSA of a national feed-in tariff framework and methodology to enable Eskom, municipal and other network operators to develop

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rational feed-in tariffs that are fair and equitable to network operators, electricity customers and the public.

23.5. OUTA supports the trading of electricity

- 23.5.1. OUTA supports opening-up of trading of electricity within the Electricity Supply Industry, to facilitate a competitive, diversified, retail electricity sector to residential, commercial, industrial, mining and agricultural customers of electricity;
- 23.5.2. Electricity trading requires a separation of the network (or “wires”) services provided by Eskom and municipal electricity distributors from retail electricity (energy) sales. Electrical energy can then be procured in bulk by aggregators and retail electricity traders from Eskom, municipal electricity distributors and/or IPPs, and sold in innovative arrangements “bundled” with other retail services to meet the needs of specific end-user market segments, including residential, commercial, industrial, mining and agricultural customers of electricity;
- 23.5.3. Eskom and municipal electricity distributors can of course continue to provide retail electricity sales as they presently do, but OUTA believes there is no reason to prevent aggregators and retail electricity traders from providing retail electricity sales as well, for the benefit of end-customers, who would then have enhanced choice to suit their particular needs;
- 23.5.4. OUTA therefor recommends that all clauses in the draft ERA Bill that serve to unnecessarily prevent, restrict, limit, inhibit or discourage retail electricity trading to residential, commercial, industrial, mining and agricultural customers of electricity, be removed or amended.

23.6. OUTA supports the restructuring and unbundling of Eskom

- 23.6.1. OUTA supports the restructuring and unbundling of Eskom, by initially ringfencing its Generation, Transmission and Distribution business activities into separate operating divisions;
- 23.6.2. Thereafter, OUTA supports the separation of Eskom's Transmission Division in a separate subsidiary legal entity/ operating company – the National Transmission Company of South

Africa (“NTCSA”) – as detailed in the Department of Public Enterprises (“DPE”) Eskom Roadmap of October 2019;

23.6.3. OUTA also supports the separation of Eskom’s Generation and Distribution Divisions into separate Generation and Distribution subsidiary legal entities/ operating companies, as detailed in the Department of Public Enterprises (“DPE”) Eskom Roadmap of October 2019.

23.7. OUTA supports the establishment of an independent Transmission System Operator (“TSO”)

23.7.1. After as short a transitional period as possible of not more than five years, OUTA supports the transfer of the functions and operations of the NTCSA to a separate legal entity/ company – the Transmission System Operator (“TSO”) – that is fully independent of Eskom Holdings and other Eskom subsidiaries;

23.7.2. OUTA supports the above in order to facilitate a diverse and competitive generation sector that is enabled by the independent Transmission System Operator (“TSO’), together with a National Control Centre (“NCC”) and Central Purchasing Agency (“CPA”) within the independent TSO;

23.7.3. OUTA supports non-discriminatory, unconflicted grid access on level playing fields by new generation entrants, PPP generators, municipal generators, and embedded, distributed and self-generation by customers, together with improved generation capacity and grid planning facilitated by the independent TSO;

23.7.4. OUTA believes this will improve electricity supply industry performance, cost efficiency and security of electricity supply, which will benefit the economy, the country and all its people, including residential, commercial, industrial, mining and agricultural customers and the public.

23.8. OUTA supports the establishment of a multi-market structure for the Electricity Supply Industry

23.8.1. OUTA supports the establishment of competitive electricity day-ahead, balancing, capacity and auxiliary services markets;

23.8.2. OUTA believes these will provide improved cost efficiencies in electricity supply that will benefit all residential, commercial, industrial, mining and agricultural customers, and the public.

23.9. OUTA supports the restructuring and rationalisation of the Electricity Distribution Industry

23.9.1. While not covered in the ERA Bill, OUTA would like to voice its support for the urgent need for the restructuring and rationalisation of the Electricity Distribution Industry, including both Eskom and municipal electricity distributors, which are seen by OUTA as deeply problematic.

23.9.2. This is evidenced by regular and growing occurrences of unplanned power outages caused by:

- Failures of distribution system infrastructure and equipment in municipal and Eskom electricity distribution networks.
- Aging and poorly maintained substations, mini-substations, transformers, lines, cables and switchgear.
- High and growing levels of electricity theft and non-payment.
- Overloading of distribution equipment and circuits due to population growth, illegal connections and electricity theft.
- Vandalism and theft of electricity infrastructure such as copper cables, overhead lines, transformers, steel structures and poles.
- High and growing levels of municipal arrear debt to Eskom in respect of payments for electricity supply.
- Regular occurrences of power outages caused by “load reduction” imposed by Eskom Distribution on both its direct customers and on municipal electricity distributors, in areas where there is overloading of distribution networks, and high levels non-payment and electricity theft.

- General human resource limitations, skill deficits, maladministration, mismanagement and corruption within municipal and Eskom Distribution environments.

23.9.3. It appears quite clear to OUTA that the current structure of the Electricity Distribution Industry is unsustainable and poses a significant threat to Eskom, electricity customers and the public. Indeed, this also poses a threat to economic growth, jobs and the wellbeing of all South Africans.

23.9.4. In the light of this, OUTA strongly opposes current efforts by the South African Local Government Association (“SALGA”) to ensure that municipalities gain EXCLUSIVE executive authority over all electricity distribution and reticulation, wall-to-wall across South Africa, including in areas currently supplied by Eskom and other licensed electricity distributors.

23.10. OUTA supports specific attention to energy storage in the ERA Bill

23.10.1. Despite the increasing role of energy storage in distributed, embedded and self-generation installations, the ERA Bill is not clear or specific regarding the treatment of energy storage. In fact, no mention is made of energy storage at all. It is therefore unclear as to how energy storage is to be treated in the ERA Bill.

23.10.2. One interpretation may be that energy storage is considered as an embedded generator in the ERA Bill. Another interpretation is that energy storage is treated separately, or not covered at all, as it is an energy storage system and not a generator.

23.10.3. In OUTA’s view, neither of the above interpretations is entirely adequate.

23.10.4. OUTA believes that energy storage should not be considered as a generation source in the ERA Bill and/ or the Integrated Resource Plan (“IRP”) for Electricity. Energy storage fulfils multiple functions in a power system. It can act as load during low demand and a source of stored energy during high demand. It can provide ancillary services such as voltage and frequency support with extremely fast response times. Furthermore, energy storage cannot generate net energy itself – it needs to be charged from an energy source before it can release energy as and when required, and is indeed a net consumer of electricity.

23.10.5. OUTA therefore suggests and recommends that there should be specific new category for energy storage in the ERA Bill. This would provide clarity for this fast-emerging technology and would allow energy storage to play a significant role within transmission and distribution networks, in hybrid and solar power plants, and “behind the meter” within customers’ premises and installations, including those of residential, commercial, industrial, mining and agricultural customers and the public.

23.11. OUTA supports streamlining of the NERSA registration processes for embedded generation

23.11.1. Currently, Schedule 2 of the Electricity Regulation Act requires registration by NERSA of all grid-connected embedded, distributed and self-generation installations above 100 kW.

23.11.2. The current NERSA registration process for embedded, distributed and self-generation facilities requires NERSA board approval for registration on a case-by-case basis in a quasi-licensing process that is quite similar to a full licensing process, as opposed to a simple a registration process to keep track of the installed capacity of such systems in South Africa. This quasi-licensing process is considered by OUTA to be an unnecessary and non-value adding impediment.

23.11.3. This is because ALL such generation installations are required to comply with the Grid Code anyway. In addition, ALL such generation installations are also required to have permission to connect to the grid from Eskom or the relevant municipal electricity distributor, who are themselves responsible to ensure that Grid Code compliance is achieved and maintained for the generation installation that is connecting to the grid.

23.11.4. This then obviates the necessity of the current NERSA board approval and quasi-licensing/ registration process that is applied by NERSA for the approval of registration of grid-connected embedded, distributed and self-generation installations.

23.11.5. This provides an opportunity to greatly simplify and streamline the current quasi-licensing NERSA registration process, in order to speed up the process and avoid a duplicate approval process after Eskom or the relevant municipal electricity distributor has already certified compliance of the generation installation with the Grid Code and approved the proposed installation for connection to the grid.

- 23.11.6. If monitoring of the installed capacity of grid-connected embedded, distributed and self-generation, installations is required by NERSA and the Transmission System Operator (“TSO”) for planning purposes, then there are other more appropriate and far more accurate options available today than the current, manual, NERSA quasi-licensing/ registration process, which is simply ignored and bypassed by many.
- 23.11.7. These include the use of smart satellite monitoring applications, and/ or working with Eskom and relevant solar and wind energy industry associations, who themselves are able to track such installations far more accurately, efficiently and effectively.

23.12. OUTA supports clarity and consistency of definitions and terminology

- 23.12.1. OUTA believes that there is room for improvement in the definitions of the terminology used in the ERA Bill and regulations thereto. This is important in order to ensure consistency with the definitions and terminology used in various other legislation and regulations relating to the Electricity Supply Industry.
- 23.12.2. In the past, significant uncertainty and confusion has been created by inconsistent and incorrect use of terminology in public announcements, documents and presentations by the Minister, various government officials, electricity suppliers, customers, technology providers and users within the Electricity Supply Industry.
- 23.12.3. For example, there is a lack of definitions for “emergency”, “failure of the market” and “national interest” in the ERA Bill. In the amended Section 34 of the ERA Bill, the Minister is granted the power to deviate from the Integrated Resource Plan (“IRP”) in an “emergency”, “in the national interest” or when there is a “failure of the market”. But none of these scenarios are defined in the ERA Bill, and therefore it is left at the discretion of the Minister to determine whether such conditions exist.
- 23.12.4. OUTA considers that such discretionary and interpretive powers of the Minister is highly undesirable.
- 23.12.5. OUTA recommends that the NCOP Select Committee on Land Reform, Environment, Mineral Resources and Energy should review this work in respect of all definitions and terminology in the ERA Bill, and the consistency and/ or lack thereof with regard to other relevant legislation and regulations.

23.13. Clarification of the roles of the Minister of Mineral Resources & Energy and the Minister of Electricity

- 23.13.1. In terms of the definitions in Section 1 of the ERA Bill, the “Minister” is defined as being the Minister of Mineral Resources & Energy. Therefore, throughout the ERA Bill, and particularly in Section 27 of the ERA Bill where reference is made to the “Minister”, it is presumed that reference is made to the Minister of Mineral Resources & Energy.
- 23.13.2. With the appointment of a new Minister of Electricity, OUTA believes it is necessary to carefully clarify the respective roles, responsibilities and powers of both the Minister of Mineral Resources and Energy and the Minister of Electricity.
- 23.13.3. This is particularly relevant in respect of the roles, responsibilities and powers relating to the Integrated Resource Plan (“IRP”) for electricity; the oversight of Eskom, the Electricity Supply Industry and the Electricity Distribution Industry; the powers to make Section 34 ministerial determinations in respect of new generation capacity; the powers to make determinations for deviations from the IRP for electricity; the powers to intervene in cases of “national interest”, “emergency” and “market failure”; etc.
- 23.13.4. OUTA therefor recommends that the NCOP Select Committee on Land Reform, Environment, Mineral Resources and Energy should carefully review the ERA Bill, and that the designated roles, responsibilities and powers of the “Minister” should be carefully considered and defined within the ERA Bill, and correctly allocated between the Minister of Mineral Resources and Energy and the Minister of Electricity.

23.14. OUTA supports limitation of the discretionary and interpretive powers of the Minister and NERSA

- 23.14.1. As a matter of principle, OUTA believes that the discretionary and interpretive powers of the Minister and NERSA should be limited to the maximum extent possible, because such discretionary and interpretive powers create policy, legal, regulatory, planning and pricing uncertainty, which further impedes security of supply, jobs, investment and economic growth.
- 23.14.2. For example, the broad powers and role assigned to the Minister to make Section 34 determinations for new or additional generation capacity, and to authorise deviations to

planning in the Integrated Resource Plan (“IRP”) for electricity, need to be addressed and curtailed, because the National Transmission Company of South Africa (“NTCSA”) and the independent Transmission System Operator (“TSO”) are intended to take over responsibility for the planning and procurement of new generation and transmission capacity.

- 23.14.3. Furthermore, where any discretionary and interpretive powers are deemed necessary, then such discretionary and interpretive powers should be exercised “in concurrence” with both the Minister and NERSA, because such powers in the electricity sector are generally of a more technical nature requiring significant and specialised electricity sector knowledge and experience.
- 23.14.4. Thus, such discretionary and interpretive powers of the Minister that are deemed necessary should be exercised “in consultation with NERSA”, and NOT “after consultation with NERSA”.
- 23.14.5. OUTA therefore recommends that further work is required to review and limit the unnecessarily wide discretionary and interpretive powers of the Minister of Mineral Resources and Energy and NERSA, and that any discretionary and interpretive powers that are deemed absolutely necessary should be exercised jointly “in concurrence” between the Minister and NERSA.

23.15. **The need for full independence of the Transmission System Operator (“TSO”) and the Independent Market Operator (“IMO”)**

- 23.15.1. The creation of the National Transmission Company of South Africa (“NTCSA”) as a subsidiary of Eskom Holdings SOC, as envisaged by the DPE Eskom Roadmap of 2019 and the ERA Bill, does not go far enough to ensure the independence of the unbundled Transmission entity.
- 23.15.2. A World Bank report from 2002 notes that a Transmission System Operator “must be independent of the ownership and control of market participants (e.g. generators, distributors and suppliers)”. It goes further and state that independence is required “so that the Transmission System Operator does not discriminate in favour of one market participant over another.”

- 23.15.3. The Department of Public Enterprises (“DPE”) and others have suggested that full independence of the Transmission System Operator (“TSO”) and Independent Market Operator (“IMO”) may be unnecessary, given the unbundling of Eskom into three separate entities (Generation, Transmission and Distribution) as subsidiaries of Eskom Holdings SOC.
- 23.15.4. But, according to the World Bank, “functional unbundling”, or the idea “that allows the grid operator to remain within a larger power enterprise that owns generation and transmission facilities but tries to establish detailed conduct rules so that the grid operator will act as if it is separate, even though it really isn’t”, is fraught with problems.
- 23.15.5. OUTA believes that this needs to be clearly addressed to ensure that the interim National Transmission Company of South Africa (“NTCSA”), the Transmission System Operator (“TSO”) and the Independent Market Operator (“IMO”) are truly and fully independent from Eskom Holdings, Eskom Generation and Eskom Distribution – administratively, financially and operationally.
- 23.15.6. OUTA therefore recommends that the absence of true independence of the interim NTCSA must be addressed as soon as possible, because it conflicts with the normal incentives of any commercial enterprise to try to protect the profits of its parent/ affiliated companies”, and because it becomes “virtually impossible for the Regulator to enforce the rules”.
- 23.16. National planning within the energy sector, and within the Electricity Supply Industry sub-sector**
- 23.16.1. OUTA considers that regular indicative national planning (as opposed to prescriptive planning) within the wider energy sector, and within the Electricity Supply Industry sub-sector, is both essential and notably inadequate in South Africa.
- 23.16.2. It was only from 1 April 2024 that the Minister of Mineral Resources & Energy has been required to publish an Integrated Energy Plan (“IEP”) in terms of Section 6 of the National Energy Act, Act No. 34, 2008. In terms of this Act, the Minister must now publish the IEP annually, covering South Africa’s overall energy needs, and how these may be met from its primary energy sources, resources and energy carriers, including electricity.

- 23.16.3. While the Integrated Resource Plan (“IRP”) for electricity is the plan for the electricity sub-sector of the wider energy sector, it is well known that South Africa’s IRP for electricity is significantly out-of-date and is only updated and published intermittently and infrequently (the last published IRP for electricity being IRP 2019, and before that, IRP 2010).
- 23.16.4. With such inadequate energy and electricity planning, it is therefore unsurprising that South Africa experiences such significant generation capacity shortages and electricity infrastructure challenges.
- 23.16.5. OUTA therefore strongly recommends that the ERA Bill should include a clear requirement that the Minister of Mineral Resources and Energy, the Minister of Electricity or the independent Transmission System Operator, must publish an Integrated Energy Plan (“IEP”), an Integrated Resource Plan (“IRP”) for electricity and a Transmission Development Plan, annually.
- 23.17. Inconsistencies within the ERA Bill and role of NERSA in setting and approving electricity tariffs**
- 23.17.1. Some aspects of the ERA Bill undermine the very objectives of the Bill which, amongst others, is to facilitate and create an independent Transmission System Operator (“TSO”) and Independent Market Operator (“IMO”), a competitive diversified generation sector, and an electricity market platform that allows competitive trading of electricity.
- 23.17.2. For example, OUTA believes that assigning NERSA the power to “set and approve prices and tariffs”, as per Clause 5 of the ERA Bill, is inconsistent with price setting by competition and market mechanisms.
- 23.17.3. The whole point of the ERA Bill is to move away from regulated pricing to more market orientated pricing with greater levels of competition and efficiency.
- 23.17.4. OUTA therefore recommends that the role of NERSA in the setting and approval of prices needs to be reviewed, minimised and restricted to instances of market failure, and that this should be incorporated into the ERA Bill.
- 23.17.5. OUTA further recommends that the NCOP Select Committee on Land Reform, Environment, Mineral Resources and Energy should review the ERA Bill to identify and

correct any other inconsistencies within the ERA Bill, or any conflicts with the overall objectives and intentions of the Bill.

CONCLUSION

24. OUTA hopes its comments and this response will be considered and taken into account in the final version of the ERA Bill, and wish to thank the NCOP again for the opportunity to make input to the proposed ERA Bill.