

Energy & Power ALERT

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IN THIS ISSUE

ERA Bill finally tabled in Parliament: What comes next?

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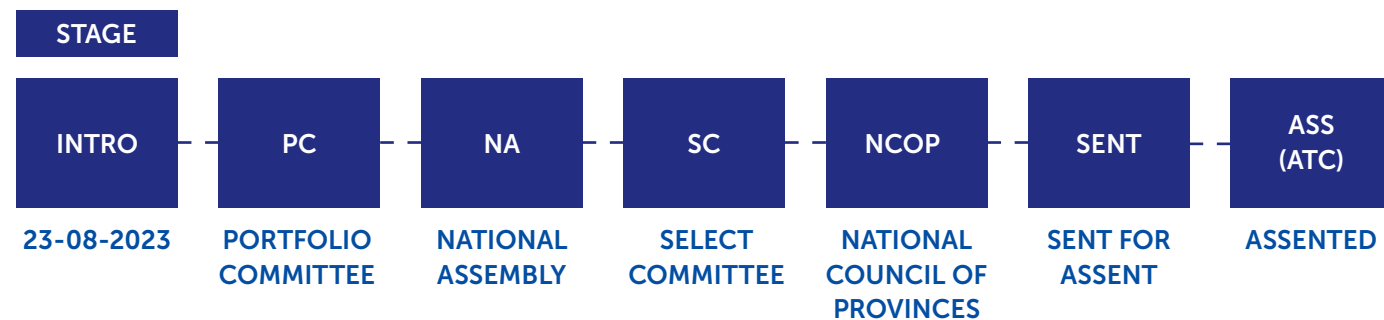
The Bill, once enacted, will introduce much anticipated changes that will unlock opportunity within the sector, including:

- the establishment, of the independent Transmission System Operator, which will act as system and market operator. This is crucial to the ultimate unbundling of Eskom; and
- a multi-market system that will, amongst other things, accommodate trading on a competitive, open market platform.

In light of the energy crisis, the Presidency previously committed to expedite the Bill. Despite this, it was only approved by Cabinet for introduction to Parliament in March 2023, with further delays experienced to get it formally and properly tabled. Though there are still calls for the ERA Bill to be fast-tracked, it is unclear how or if this will be achieved.

Legislative process

As per Parliament's website, the below constitutional legislative process will still have to be followed before the ERA Bill can be assented to and enacted. Commencement of the Bill's provisions will also depend on the date determined by the President – while it may very well be the date it is assented to, it is also possible for it, or parts thereof, to commence at a future date.



As per the most recent parliamentary deliberations on the ERA Bill, any bill that is unfinalized at the end of this Parliament's term, would fall away and need to be revived. Failure to prioritize the ERA Bill prior to the 2024 election year could thus present the risk of further significant delays.

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Public hearings

In terms of the Memorandum on the Objects of the Electricity Regulation Amendment Bill, 2023 that was published with the ERA Bill, *"a series of consultations were undertaken with industry and other key sector stakeholders. Accordingly, the general public and institutions at large have been consulted in preparing the Bill"*.

It is noted that the current tabled version of the ERA Bill differs in certain respects from the version of the Bill that was released for public comment in February 2022. Further amendments are also anticipated as the Bill is deliberated by the National Assembly and National Council of Provinces (NCOP) in the coming months.

It is understood that the National Assembly and NCOP have a discretion on whether to hold further public hearings on the Bill. Both houses must have due regard of their obligations under sections 59(1)(a) and 72(1)(a)

the Constitution of the Republic of South Africa, 1996, which respectively require the National Assembly and NCOP to facilitate public involvement in the legislative process.

Worth noting is the recent decision of the Constitutional Court in *South African Iron and Steel Institute and Others v Speaker of the National Assembly and Others* [2023] ZACC 18. The applicants in this matter challenged the validity of specific provisions of the recently enacted National Environmental Management Laws Amendment (NEMLA) Act 2 of 2022 owing to the fact that the National Assembly and NCOP had failed to comply with their constitutional obligations to facilitate public participation. More specifically, the applicants alleged that, while the public was consulted on an initial version of the NEMLA Bill, certain amendments to subsequent versions of that Bill, which ultimately found their way into the NEMLA Act, were never subject to public comment.

In its judgment handed down on 26 June 2023, the Court held that *"Parliament had failed to comply with its constitutional obligation to facilitate public involvement in its legislative processes"* in respect of the relevant provisions of NEMLA Act. The provisions were declared invalid, with public participation processes required to be started afresh.

Despite the need to expedite the ERA Bill, it would be remiss of Parliament not to continue to involve industry and the public at large in the law-making process insofar as any further material changes are introduced to the Bill. This is especially considering that the ERA Bill will ultimately result in a complete overhaul of the existing electricity market.

Based on comments from the Chairperson of Parliament's Mineral Resources and Energy Committee, it is understood that the Committee will be engaging the public for further comment in due course.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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