

Quarterly energy market update

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SOUTH AFRICA

In this update for Q1 of 2024, we touch on the following:

- Electricity Regulation Amendment Bill
- Eskom unbundling process
- The Draft IRP
- REIPPPP and BESIPPPP updates
- National Wheeling Framework
- Curtailment
- Streamlining of environmental authorisation process for energy projects
- National Nuclear Regulatory Amendment Bill
- Ministerial Determination for new nuclear power challenged
- Codification of IGCARs



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Quarterly energy market update

South Africa's energy sector is undergoing significant change, as both public and private sectors seek to find ways to balance energy security with the country's decarbonisation objectives. The CDH Quarterly Energy Update aims to highlight the material legal developments that are shaping the market, with the intention to distil what is relevant for our clients and their businesses.

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Electricity Regulation Amendment Bill passed by National Assembly

The Electricity Regulation Amendment Bill [B23-2023] (ERA Bill), which seeks to overhaul the South African electricity market, was passed by the National Assembly on 14 March 2024 following public hearings and parliamentary deliberations that commenced in early December 2023. The ERA Bill has been transmitted to the National Council of Provinces (NCOP) for concurrence.

The NCOP Select Committee on Land Reform, Environment, Mineral Resources and Energy has since released the ERA Bill for a further round of public consultation, with comments due by 29 April 2024. For clarity on the status of the ERA Bill within the parliamentary legislative process, see our alert on the ERA Bill from 2023 [here](#).

Once enacted, the Bill will allow for the transition from a vertically integrated electricity market, to a competitive multi-market system that will, amongst other outcomes, accommodate electricity trading on a competitive, open market platform. However, the ERA Bill merely provides the framework for the transition, and significant steps will still need to be taken once the Bill is enacted to realise its vision – something that market experts have indicated can take well over 10 years.

As a first next step, the Wholesale Market Code is expected to launch 19 April 2024, which will form the basis of the proposed competitive electricity market, providing for the purchase and sale of electricity by participating traders, generators and retailers.

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Eskom unbundling progresses

The unbundling of Eskom is material for the transition to a more competitive multi-market as envisaged under the ERA Bill. Since the new year, significant strides have been made in this regard, including:

- In January 2024, appointment of the board of the National Transmission Company of South Africa (NTCSA).
- In February 2024, formal publication by the National Energy Regulator of South Africa (NERSA) of the licenses required by the NTCSA for operation, including trading, transmission and import and export licenses.
- In March 2024, NERSA's approval of (i) the transfer of Eskom's rights and responsibilities under existing power purchase agreements (PPAs) with independent power producers (IPP) to the NTCSA; (ii) issuance of a cost recovery letter to the NTCSA to replace Eskom as buyer of electricity from IPPs; and (iii) IPP generation licence amendments to specify the NTCSA as the electricity buyer.
- In April 2024, reported satisfaction of all conditions precedent for the separation and operation of the NTCSA, including lender and creditor consent.

According to reports, the NTCSA will be able to commence trading by June 2024, provided that all outstanding requirements under the Companies Act 71 of 2008 are fulfilled.

Release of Draft IRP for comment

Following its release on 4 January 2024, and aiming to garner further public input, the Minister of Mineral Resources and Energy announced the extension of the commenting period for the draft Integrated Resource Plan 2023 (Draft IRP) to 23 March 2024.

Since its publication, the Draft IRP has been the subject of significant scrutiny, specifically in respect of the assumptions and modelling that underpin the document. See [here](#) for CDH's more comprehensive assessment of the Draft IRP.

REIPPPP Round 7 & BESIPPPP Round 2 Bid Dates Extended; BESIPPPP Round 3 launched

In a media statement published on 28 March 2024, the Department of Mineral Resources and Energy announced –

- Extension of the bid submission deadlines for REIPPPP Round 7 and BESIPPPP Round 2 to 30 May 2024 and 6 June 2024 respectively, primarily to allow sufficient time for Eskom to process Cost Estimate Letter applications.
- Release of the RFP for BESIPPPP Round 3, which calls for bids to be submitted for 616 MW of battery energy storage projects in respect of 5 substation sites, all located in the Free State Province, which have been pre-selected by Eskom. The bid submission deadline follows shortly after Round 2 of the BESIPPPP and is set for 31 July 2024. A bidders' conference is set for 9 May 2024.

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National Wheeling Framework with NERSA for approval

In his latest progress report on the Energy Action Plan Update from March 2024, President Cyril Ramaphosa confirmed *inter alia* that the National Wheeling Framework (the Framework) has been finalised and has been submitted to NERSA for approval.

The Framework is a fundamental piece of the puzzle to further unlock the potential for wheeling under private generation and offtake agreements. To date, bilateral power purchase arrangements have largely been limited to high-voltage offtakers that are connected to the Eskom distribution or transmission network. Due to the absence of wheeling frameworks across the majority of South Africa's municipalities, low and medium voltage municipal connected customers have largely been unable to access off-site renewable energy solutions. Per the President's update, the Framework "*will enable a standardised approach to wheeling across the country once approved by the regulator*".

That being said, remaining hurdles will also have to be addressed. Once the Framework is adopted, municipalities will still have to expend the necessary resources to develop individualised wheeling frameworks and create an enabling environment, which includes updates to metering and billing systems. Further, municipalities that are not in financial good standing with Eskom will not be able to

amend their existing Electricity Supply Agreements to allow for wheeling into their distribution networks. While virtual wheeling has been presented as a solution to this dilemma, it remains in pilot phase, with its own regulatory and bankability considerations still to be ironed out.

Curtailement

In January 2024, Eskom published the much-anticipated Generation Connection Capacity Assessment (GCCA) Addendum, which is intended to provide clarity in respect of Eskom's proposal in the GCCA 2025 to use "*curtailment*" to address the challenge of limited available grid capacity faced by IPP projects in the Eastern, Western and Northern Cape provinces.

See [here](#) for CDH's more detailed commentary on the GCCA Addendum and application of curtailment to REIPPPP projects.

It is understood that a detailed curtailment framework is currently being developed by Eskom, in consultation with the National Energy Crisis Committee (NECOM) and industry, which will assist to navigate the implications of curtailment on projects signed under bilateral PPAs. This is necessary considering the unworkable implications of the initial proposal put forward by Eskom, where the buyer and seller under a PPA are required to share in losses that stem from 10% curtailment on affected wind projects – something that would not have been accounted for in a PPA, agreed tariff or returns calculations.

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Streamlining of environmental authorisation processes for solar PV, battery storage and grid infrastructure projects

On 27 and 28 March 2024, the Minister of Forestry, Fisheries and the Environment published various notices in terms of the National Environmental Management Act 107 of 1998 aimed at streamlining the authorisation of renewable energy and battery storage facilities, including:

- The Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in Areas of Low or Medium Environmental Sensitivity (Battery Storage Norm).
- The Norm for the Exclusion of the Development and Expansion of Solar Photovoltaic Facilities in Areas of Low or Medium Environmental Sensitivity (Solar PV Exclusion Norm).
- The draft Standard for the Development and Expansion of Electricity Transmission and Distribution Power Line Infrastructure, 2024 (Draft Grid Infrastructure Exclusion Standard) that seeks to replace the existing standard that was published in June 2022.

All of the above Norms and Standards are intended to exclude solar PV, battery storage and grid infrastructure projects from the requirement to obtain an environmental authorisation (EA), provided that such projects meet the specified exclusion criteria. While a full basic assessment or environmental impact assessment process will not have to be followed, certain prescribed steps will still have to be complied with prior to commencing with the project,

including site sensitivity verification, public consultation and registration of the project. As with the ordinary EA process, registration of the project will still be subject to an appeal process, whereby stakeholders can challenge the registration outcome.

While the Battery Storage Norm and Solar PV Exclusion Norm were published in final form and became effective on 27 March 2024, comments on the revised Draft Grid Infrastructure Exclusion Standard are due by 29 April 2024.

National Nuclear Amendment Bill passed by National Assembly

The National Nuclear Regulator Amendment Bill [B25B-2023] (NNRA Bill) was adopted by the National Assembly on 26 March 2024 and submitted to the NCOP for concurrence.

With the National Nuclear Regulatory Act 47 of 1999 (NNRA) not having been amended since it was first promulgated, the NNRA Bill seeks to introduce amendments that will *inter alia* align the NNRA with international best practice and cater for identified shortcomings, including financial provisioning requirements for safe rehabilitation and decommissioning activities and administrative enforcement capabilities of the National Nuclear Regulator.

With the Department of Mineral Resources and Energy having recently briefed the NCOP Select Committee on Land Reform, Environmental Mineral Resources and Energy on 9 April 2024, it is expected that the NNRA Bill will be released for a further round of public participation shortly.

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Ministerial Determination for New Nuclear Energy Generation Capacity challenged

On 26 January 2024, the Minister of Electricity gazetted a determination in terms of section 34 of the Electricity Regulation Act 4 of 2006 for the procurement of 2,500 MW of energy from new nuclear energy generation (the Determination), as aligned with decision 6 of the current Integrated Resource Plan 2019.

The Determination provides that the generator will be Eskom, or any other organ of state, or in partnership with any other juristic person. Eskom, or any entity determined through its unbundling process, will be the buyer.

The Determination was first signed in March 2020 by the Minister of Mineral Resources and Energy with concurrence provided by NERSA in 2021. Presently, it would fall on the Minister of Electricity to sign the Determination.

Since its publication, the Democratic Alliance has instituted legal proceedings in the High Court of South Africa to challenge the lawfulness of the Determination on the basis of *inter alia* procedural unfairness.

Codification of Interim Grid Capacity Allocation Rules on the cards

With the dust settled around the Interim Grid Capacity Allocation Rules (IGCARs), which were unexpectedly adopted and enforced in June 2023, the President's latest update to the Energy Action Plan also confirms that codification of the IGCARs will be prioritised by NECOM. This will provide industry with the necessary certainty as to the process and associated requirements when applying for access to connect to the national grid.

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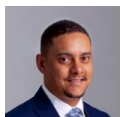
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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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