

# Projects & Energy

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## Opportunity to connect: Section 34 determination and draft regulations pave the way for private sector involvement in new electricity transmission infrastructure

The lack of adequate grid capacity is a critical risk that continues to significantly stall progress in the implementation of South Africa's energy transition, especially in respect of the uptake of renewable energy. The market first came to understand the true extent of grid capacity constraints at the end of 2022, when only 1,000 MW out of a possible 5,2 GW was awarded under Bid Window 6 of the Renewable Energy Independent Power Producer Procurement Programme (REIPPPP).

Various regulatory initiatives have since been introduced by Eskom to try and manage access to available grid capacity, including:

- the Interim Grid Capacity Allocation Rules;
- the congestion curtailment framework, which remains pending with the National Energy Regulator of South Africa (NERSA); and
- an application for grid capacity reservation/preservation in favour of energy projects procured in terms of a public procurement programme, which application was refused by NERSA.

However, considering the latest iteration of the Transmission Development Plan (TDP) for the period 2025 to 2034, it is trite that *ad hoc* solutions will be not be sufficient to cater for the 56 GW of new generation capacity that will need to be integrated into the transmission network between 2025 and 2034, requiring over 14,500km of new transmission lines and 210 transformers, to provide 133,000 MVA of capacity – all of which is estimated to cost around R440 billion. With Eskom and the Government's balance sheets too constrained to unilaterally address the issue, participation of the private sector in the development and operation of transmission infrastructure has become a national strategic priority. As provided in the TDP, *"private sector participation through Independent Transmission Projects (ITPs) in transmission has been a focal point for enhancing efficiency of implementation, increasing investment and promoting innovation in the energy sector"*.

The commencement of the amendments to the Electricity Regulation Act 4 of 2006 (ERA) on 1 January 2025 was the first real regulatory step taken to create an enabling legal framework for the uptake of independent, private transmission projects. Amongst other changes, section 34 of the ERA was amended to include provisions allowing for the Minister of Electricity and Energy (Minister) to make a determination regarding the need for new electricity transmission infrastructure.

Further realising the potential for private participation, the Minister recently published:

- a determination in terms of section 34 of the ERA for the procurement of new electricity transmission infrastructure to ensure the optimal supply of electricity in South Africa (Determination) on 28 March 2025; and
- draft Electricity Transmission Infrastructure Regulations (Draft Regulations) on 3 April 2025.



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## The Determination

In terms of the Determination, 1,164km of 400kV transmission power lines and associated transformation infrastructure is to be procured for the Northern Cape, North-West and Gauteng provinces. Such infrastructure is to be procured from independent transmission providers by the Department of Electricity and Energy (Department) (or its mandatory) in terms of a cost-effective, fair and equitable tendering process, with the National Transmission Company of South Africa (NTCSA) to act as buyer and enter into the associated transmission services and project agreements.

During a media briefing on the Determination, the Minister formally introduced the ITP programme and explained that the intention is to create *"a dispensation where we are going to accommodate investments by private sector players on the transmission side"*. He acknowledged that the country's renewable energy assets are not being fully exploited as a result of transmission constraints and that the level of investment required mandates the involvement of the private sector.

As to the design of the ITP programme, the Minister further confirmed that:

- It will be driven by the principle of *"late-stage tender"*, which essentially requires the Government to ensure that material regulatory hurdles have been cleared in advance to derisk the programme, including the formulation of regulations and securing certain permits in advance, such as servitudes and environmental authorisations for the transmission corridors.

- The intention is to unlock 3,222MW of new generation capacity, with the 1,164km of transmission lines to be broken up into various pre-selected and assessed corridors and projects. The list of seven pre-selected projects has been made publicly available.
- Through the ITP programme Request for Information (RFI) that was released in November 2024 and called for submissions by February 2025, the Department sought to establish the market's appetite for investing in transmission projects. Through their submissions the market has shown preference for the build-operate-transfer and build-operate-own-transfer models.
- It is anticipated that the request for qualification will be published in July 2025 and will assess the credentials of those entities intending to participate, with the request for proposals to be released in November.
- The 1,164km of transmission lines to be procured in terms of this Determination constitutes a pilot ITP programme, with more work to be done in terms of rolling this out on a medium- to long-term basis.
- Expropriation of private land for ITPs will remain a last resort where all other legal avenues to secure the land for such ITPs have been exhausted.





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While it is only at pilot stage, it is worth noting that other grid-locked provinces, including the Western Cape and Eastern Cape, have not been included in the Determination, thus still excluding those areas with the greatest capacity for new wind generation projects. The Minister did, however, stress that the NTCSA continues to implement other priority projects for the expansion of grid infrastructure. Looking at the TDP, several projects are noted to be underway or in an “execution” phase to alleviate grid congestion, including several projects in these Cape provinces.

### The Draft Regulations

The Draft Regulations aim to facilitate planning for the procurement and establishment of transmission capacity by private parties to expedite the establishment of new ITPs. In addition to certain governance and procedural matters, particularly around issuance of determinations under section 34 of the ERA, the Draft Regulations also provide for:

- determinations for cross-border transmission capacity and multi-component energy infrastructure projects comprising of new generation capacity, electricity transmission infrastructure and other related infrastructure;
- the “value for money” transmission service agreements to be entered into between the ITP and buyer, being the NTCSA; and
- NERSA’s obligation to implement cost recovery mechanisms to ensure that the NTCSA is able to recover costs associated with an ITP, transmission services agreement and matters relating thereto.

Nothing under the Draft Regulations will impact the NTCSA’s ability to establish or procure transmission infrastructure or capacity of its own accord.

It is worth noting that the Determination was pre-emptively published prior to the finalisation of the draft Integrated Resource Plan 2023 and the Draft Regulations, which does potentially taint its validity from a procedural perspective.

The Draft Regulations are open for comment for a period of 30 days from 3 April 2025.

### Conclusion

Significant strides are evidently being made by the Department to try remove the roadblocks that continue to stagnate the uptake of renewable energy, be it under REIPPPP or bilateral projects. While the ITP programme is only in its pilot phase, the TDP already reflects the vast extent of opportunity available for the private sector to get involved in the long-term as the programme is set to ramp up over time.

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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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