

Scheduling confusion for Private Electricity Generators

On 10 November 2017, the Minister of Energy gazetted a notice which amended and substituted Schedule 2 to the Electricity Regulation Act, 2006 (“**ERA**”). This amendment was done in accordance with the Minister’s powers in terms of section 36(4) of the ERA which empowers the Minister to do so. While the amended Schedule 2 is more detailed, it lacks the certainty required and accordingly creates further confusion.

The purpose of the amended Schedule 2 is to clarify which activities are exempt from the requirement to apply for and hold certain licences under the ERA and which activities are required to be registered with the National Energy Regulator (“**NERSA**”) in accordance with section 9(1) of the ERA. The previous exemptions contained in Schedule 2 were:

- _any generation plant constructed and operated for demonstration purposes only and not connected to an inter connected power supply;
- _any generation plant constructed and operated for own use; and
- _non-grid connected supply of electricity except for commercial use.

These activities have been replaced by an extensive and detailed list of specific activities that are now exempt from the obligation to obtain a licence, but they require registration with NERSA, which is a new requirement. This registration requirement lacks detail on the formalities and process of registration. Further, there is no transitional period to allow for the phasing-in of registration, which appears to be an immediate requirement.

In terms of the amended Schedule 2, the following activities are exempt from the requirements of section 7 of the ERA:

1. The operation of a generation facility with an installed capacity of no more than 1MW, where such generated electricity is connected to the national grid and supplied to a single customer but there is no wheeling of the electricity through the national grid. In this instance, the generator or the single customer and the holder of the distribution licence are required to enter into a connection agreement; or the holder of the distribution licence must have given approval to the generator or the single customer (as applicable). This category is intended to provide legal certainty in respect of generation facilities of less than 1MW which connect to distribution networks and which are commonly referred to as small-scale embedded generation (“**SSEGs**”). It is important to note, that on the date that the connection agreement is entered into (or the approval is obtained) the Minister must not have published a notice in the government gazette stating that the amount of megawatts allocated in the integrated resource plan (“**IRP**”) has been reached. No timing has been provided for the publication and commencement of this IRP. In addition, there is no guidance as to how many megawatts will be allocated to SSEGs in the IRP and how this allocation will be apportioned or distributed across the SSEGs.

2. The operation of a generation facility with an installed capacity of no more than 1MW, where such generated electricity is connected to the national grid and supplied to a single customer or related customers but where there is wheeling through the national grid. This category relates to generation facilities which are private and serve dedicated loads but which require wheeling. This category also includes the caveat that on the date that the connection agreement is entered into the Minister must not 2

have published a notice in the government gazette regarding the cap on embedded generation.

3. Off-grid SSEGs with an installed capacity of no more than 1MW and which produce electricity for:

- a. supply to the owner of the generation facility;
- b. consumption by someone related (as per the Companies Act, 2008) to the generator or owner; or
- c. the supply to a customer for consumption on the same property as the generation facility.

For purposes of this category, “property” means a farm, agricultural holding, erf or sectional title or a building located thereon.

4. Other notable exempted activities include the following:

- a. Generation facilities operated for demonstration purposes only, which may or may not be connected to the national grid and which will be in operation for no more than 36 months. In this instance, the electricity generated is not sold.
- b. A SSEG where electricity is generated from a co-product, by-product, waste product or residual product of an underlying industrial process and under the same circumstances as catered for under paragraph 3 above. The registration requirement would be in addition to complying with the requirements under the National Environmental Management Act, 1998 and the Waste Act, 2008.
- c. A generation facility for the sole purpose of providing standby or back-up electricity in the event of, and for a duration no longer than, an electricity supply interruption. This would include standby generators already installed for private use.
- d. Facilities which were already exempt from the requirement to obtain a licence prior to the amendment of Schedule 2 will continue to be exempt.
- e. The continued operation of an existing generation facility which has been in operation and which, within 3 months of the coming into effect of the amended Schedule 2, has notified NERSA of its non-compliance with Schedule 2 and has signed an agreement to comply with timeframes determined by NERSA within which to ensure compliance.
- f. A distribution facility that is connected to a generation facility, where the distribution facility is used exclusively for the wheeling of electricity from that facility to either the customer, in circumstances where the electricity is not transported through the national grid, or the point of connection, in circumstances where the electricity is transported through the national grid.
- g. The sale of electricity by a reseller in circumstances where the tariff or price charged by the reseller to the customer does not exceed the tariff or price which would have been charged by the holder of a distribution licence for the area in which the electricity is supplied, and/or an operator of a licensed distribution facility where the customers are or would have been connected. This category also requires the conclusion of a service delivery agreement 3

between the reseller and the holder of a distribution licence for the area in which the electricity is supplied, the general conditions of which must have been approved by NERSA.

Should you have any queries in respect of the applicability of the amended Schedule 2 to your operations, please do not hesitate to contact us.

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