

CHAMBER OF MINES OF SOUTH AFRICA



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16 April 2012

The Honourable S J Njikelana MP
Chairperson
Parliamentary Portfolio Committee on Energy

Attention: Mr A Kotze

Dear Sir

COMMENT ON INDEPENDENT SYSTEM AND MARKET OPERATOR BILL: B9 2012

The Chamber of Mines welcomes this opportunity to comment on the Independent System and Market Operator Bill, B9 – 2012.

The Chamber in principle supports the establishment of the envisaged Independent System and Market Operator (ISMO). It will not only assuage the potential for conflict of interest that exists at present, but it could also be the first step towards the creation of a market driven electricity supply industry with generation and distribution entities competing in their respective sectors.

The Chamber envisages a system where access to the electricity grid is available to all generators of electricity who comply with the required technical criteria.

A system operator is needed to ensure that the supply and demand for electricity is balanced with an adequate reserve margin to allow for unplanned outages. A market operator is needed to ensure that consumers who are not contracted to specific generators obtain an adequate supply.

In such an arrangement it should be possible for any generator to supply electricity to a specific contracted consumer or customers through the system.

The Bill in its current form is, however, not totally clear on several important aspects.

COUNCIL OF THE CHAMBER: G Briggs, J Chawapiwa (Ms), I Cross (Ms), M Cutifani, E Dorward-King (Dr), I Farmer, G Gomwe, C Griffith, MJ Houston, N Mbazima, X Mkhwanazi(Dr), N Nicolau, SA Nkosi, M O'Hare, B Petersen, N Pienaar, A.Sangqu, MP Schmidt, T Schutte, B Sibiyi, M Teke, P Turner, W Uys, BR van Rooyen, J Wallington, H Wenhold.

System operator

Clause 4 (2) (a) to (t) require ISMO to act as the system operator and to control the integrated power system and related systems. By implication ISMO will operate the national grid. It is, however, not clear whether ISMO will own the national grid. Without any explicit provision in this regard the ownership of the grid will remain with Eskom. (The comment on clause 40 below refers.)

It is possible for a system operator to control a grid without owning it, but if the owner of the grid is also the major generator of electricity, the system operator will be in a very invidious position. ISMO can only be truly independent if the ownership and maintenance of the transmission grid is in the hands of an entity that is itself independent from any electricity generator.

The buying of electricity

In terms of Clause 4 (3) (d) ISMO must procure electricity from generation licensees within the Republic of South Africa and outside its borders, with the exception of generators exempted by licence from selling to ISMO.

This clauses raises the following questions:

- The National Energy Regulator of South Africa (NERSA) has no jurisdiction over generators of electricity outside South Africa, there can, therefore, be no generation licensees outside the borders of South Africa.
- What will the criteria be for exempting generators from selling to ISMO ?

The Chamber is concerned that legislating these clauses with their current wording will preclude independent generators from using the national transmission power system to convey electricity to their direct customers in terms of bilateral agreements. It is accordingly **recommended** that this clause be amended to clarify the uncertainties and to provide explicitly for independent generators to sell electricity directly to contracted customers.

The selling of electricity

In terms of Clause 4 (3) (j) ISMO must enter into power sales agreements with ISMO Customers. ISMO customers are defined as “the customers to whom ISMO may sell electricity as identified by the Minister through regulation or by notice in the Gazette” Once again some questions arise:

- What will the criteria for identifying ISMO customers be and which entity will formulate those criteria ?
- How will those large industrial customers currently supplied directly by Eskom be affected ?

It is **recommended** that the relevant clauses be amended to indicate criteria for ISMO customers and to clarify the impact on current direct Eskom customers.

Powers of entry and inspection

Clause 35 (1) (a) provides that any person authorised by ISMO “may enter upon any land for the purpose of carrying out surveying, tests and such other forms of investigation in relation to design or construction of new generation capacity”

The purpose of this clause is not clear. It is accepted that ISMO should be able to inspect and investigate the premises and operations of generators supplying its network. This clause, however, empowers persons authorised by ISMO to enter upon any land for investigations relating to any new generation capacity.

It is **recommended** that the purpose of this provision be clarified and that the clause be reworded accordingly.

Clause 35 (1) (b) duplicates section 22 of the Electricity Regulation Act which provides that any person authorised thereto by a licensee may at all reasonable times enter any premises to which electricity is or has been supplied by the licensee, in order to inspect any lines, meters, fittings, works and apparatus belonging to the licensee, or for the purpose of ascertaining the quantity of electricity consumed, or where a supply is no longer required, or where the licensee may cut off the supply, for the purpose of removing any lines, meters, fittings, works and apparatus belonging to the licensee.

As ISMO will be a licensee in terms of the Electricity Regulation Act it will automatically have these powers. Clause 35 (1) (b) therefore appears to be superfluous.

Transfer of assets, rights, liabilities and obligations

In terms of Clause 40 some assets are to be transferred from Eskom to ISMO. The Bill requires Eskom to compile a list of all the fixed property and other real rights in fixed property, movable assets, intellectual property and all liabilities, rights and obligations, including the values applicable to each asset, right, liability and obligation, arising from or relating to or attributable to the functions performed by Eskom immediately prior to the commencement of this Act, which can legally be transferred to ISMO in order for it to perform its functions. The Board of ISMO must then negotiate with Eskom on what is to be transferred to Eskom.

This means that there will be no certainty on which assets will be transferred to ISMO before ISMO is established and then very late in the transfer process.

In planning for the establishment of ISMO some thought must have been given to which Eskom assets it would require to function properly. It is **recommended** that this clause be reworded to indicate which assets are to be transferred from Eskom to ISMO.

Definitions

Department is defined as the department responsible for energy while Minister is defined as the Minister of Energy. It is **recommended** that Department be defined as the Department of Energy.

The Chamber will appreciate the opportunity to make an oral presentation on its position and comment at the envisaged public hearings.

Please contact me should you require any further information or clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'DKRUGER', written in a cursive style.

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