DRAFT GRID CAPACITY ALLOCATION RULES

To ensure efficient, expeditious and uniform administration of grid capacity allocation and third-party access to transmission and distribution power systems, and to create sustainable and justifiable considerations for licensees to apply when allocating grid capacity enabling third party access.

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DEFINITIONS

Terms not otherwise defined in the Act and/or Codes shall have the meaning given to them below.

Act	The Electricity Regulation Act, 2006 (Act No. 4 of 2006), as amended or re-enacted from time to time.
Applicant	A legal entity or third party applying to a transmission or distribution licensee for access to its Network.
Capacity	The amount of power that can be reliably transmitted through the network or component thereof, whether serving loads or accepting generation, without exceeding the technical limits of any network component or compromising system operation resulting in potential grid instability.
Codes	The South African Grid Code, the Distribution Code, or any other code approved by NERSA, as may be applicable.
Consumer	A user of electricity (person or legal entity) that has entered into an agreement with a licensed Distributor of electricity.
Distribution power system	A power system operating at or below 132kV.
Electricity Pricing Policy	Electricity Pricing Policy, dated 12 December 2008, including subsequent amendments thereto.
Electricity supply industry	The import, export, generation, transmission, distribution, system operation and trading of electricity and all activities related thereto, and for purposes of the Rules, includes investors looking to invest in industry infrastructure.

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Generation	The production of electricity by any means.
Generator	A facility that generates electricity for the purposes of own use, or to sell electrical energy through a power purchase agreement.
Licensee	A legal entity licensed by the NERSA in terms of the Electricity Regulation Act
Network	The transmission or distribution power system, as may be applicable.
Network Service Provider	A legal entity that is licensed to provide network services through the ownership and maintenance of an electricity network.
Service	Any service provided by a licensee as part of a licensed activity and recognised by the Regulator as such.
Transmission Power System	A network for the conveyance of electricity that operates above a nominal voltage of 132kV, including assets that are approved by the Regulator to be part of the transmission power system.

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ABBREVIATIONS

EPP	Electricity Pricing Policy, dated 12 December 2008
ER	Energy Regulator
ERA	Electricity Regulation Act, 2006 (Act No. 4 of 2006), as amended or re-enacted from time to time
NDP	Network Development Plan
NERSA	National Energy Regulator of South Africa
NSP	Network Services Provider
TDP	Transmission Development Plan

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1. BACKGROUND

1.1 Grid access refers to the process of connecting electricity generators, as well as consumers, to the transmission and distribution power systems. A crucial element of this access process is that renewable energy generated not only enters the grid but is also allowed to be dispatched and sold according to the relevant grid connection rules and codes.

1.2 As demand for electricity generation rises and the shift from fossil fuels to renewable sources continues, it is essential to have well-defined policies and rules that protect grid access matters. These rules ensure fairness and consistency in their implementation.

1.3 However, available grid connection capacity is becoming increasingly limited, particularly at the substation level and throughout the western part of the country. This scarcity highlights the need for regulatory measures to establish structured rules for grid capacity allocation.

1.4 Delays that happen after the allocation of grid access resulting in the actual start of project construction differed to later dates often occur due to financial constraints or lengthy processes for environmental approvals.

1.5 The inadequate development of grid infrastructure not only hinders the connection of new generation power sources but also slows down the energy transition, resulting in higher costs for clean energy developments. Thus, it is important to evaluate key factors that can ensure efficiency, effectiveness, and fairness in grid connection processes.

1.6 Given the shortages in grid connection capacity and the rapidly changing landscape of electricity generation markets, it has become clear that grid capacity allocation rules must be crafted to ensure non-discriminatory and open access. This approach should be fair and transparent for all applicants seeking grid connection.

1.7 The rules are designed to promote a balanced allocation of grid capacity among all applicants, which is essential for maintaining long-term energy security. Consequently, non-discriminatory access will enhance customer options for affordable and reliable electricity supply.

1.8 In the South African market, regulating the allocation of grid access by transmission and distribution network owners is essential, especially as the energy sector moves towards a more competitive environment. In this context, the Energy Regulator has found it necessary to outline key regulatory principles for the use and allocation of access to the transmission and distribution grids. This aims to ensure that access is granted fairly and that the available capacity in the grid is utilised efficiently and effectively.

1.9 As electrical transmission and distribution lines are historically natural monopolies, it is vital to ensure fair access to these power systems to allow healthy competition in the electricity market that may result in competitive prices for end users

2. LEGAL MANDATE

2.1 The National Energy Regulator of South Africa (NERSA) is a regulatory authority established as a juristic person in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) ('NERA').

2.2 NERSA's mandate is to regulate the electricity, piped-gas and petroleum pipeline industries in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), Gas Act, 2001 (Act No. 48 of 2001) and Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).

2.3 Section 2A of the Electricity Regulation Act, 2006 (Act No.4 of 2006), as amended (the 'ERA') confirms that the ERA is applicable to the generation, transmission, distribution, reticulation, system operation, trading, and import and export, of electricity activities, and to persons undertaking such activities.

2.4 The Energy Regulator ('ER') in terms of section 3 of the ERA, is the custodian and enforcer of the regulatory framework provided for in the ERA and has regulatory authority over persons undertaking activities, which are subject to the ERA. The ER is therefore entrusted to ensure that the objectives of the ERA are achieved.

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2.5 The ER is obliged in terms of section 4(a) of the ERA to (iv) issue rules designed to implement the national government electricity policy framework, the integrated resource plan and this Act.

2.6 The ER is empowered in terms of section 35(1) of the ERA to make rules, guidelines, directives and codes of conduct and practice after consultation with licensees, municipalities that reticulate electricity and such other interested persons as may be necessary.

2.7 Section 35 (3) of the ERA further provides that, without derogating from the general nature of the empowerment, the ER make rules which relate to (c) the security, operation, use and maintenance of transmission and distribution power systems and (k) any other ancillary or administrative matter for which it is necessary to make rules for the proper implementation of this Act.

2.8 Electricity Pricing Policy 2008 at policy position 5 details the circumstances under which access must be provided to all users which aligns with the provisions of section 21 of ERA, which requires transmission and distribution licensee to provide non-discriminatory access to its transmission or distribution power system to third parties.

2.9 In the development of delegated or subordinate legislation, the following interactive factors play a role in enabling legality of such subordinate legislation which are:

a) The extent to which the discretion of the delegated authority is structured and guided by the enabling legislation.

b) The public importance and constitutional significance of the measures.

c) The shortness of the time period to develop such subordinate legislation.

d) The extent to which the subject matter necessitates the use of forms for rapid intervention which other processes could be slow and inhibit.

2.10 The justification for having the rule making powers being vested in administrative bodies such as NERSA is based on numerous practical considerations including:

a) The technical nature of financial regulation and the degree to which specialist knowledge is needed for effective rule making.

b) The importance of the time factor in addressing matters where rapid intervention is critical.

c) Issues on which regulations are made are more often than not of a non-political, administrative/technical nature.

d) Best practice in other jurisdictions indicate that rule-making powers are vested in administrative authorities/bodies rather than in political office-bearers.

e) Rules are subject to the ultra vires rule which means that they may be struck down by a court if not authorised in the enabling Act.

2.11 To meet the legality requirement, the ER has ensured that the appropriate powers have been exercised to ascertained jurisdictional fact and satisfy the stakeholder consultation legal requirements.

2.12 These rules are developed to ensure uniformity in the consideration of applications, relevant factors and the lapsing of such right to access that has been given.

3. OBJECTIVES OF GRID CAPACITY ALLOCATION RULES

3.1 The objectives of these rules are to:

a) Promote investment in the Electric Supply Industry.

b) Ensure the efficient, fair, and reliable use of the electricity grid infrastructure.

c) Improve capacity allocation to prioritise projects that are ready to connect while maintaining options for applicants.

d) Bring clarity and order to how Grid Capacity is allocated to potential generation and load projects.

e) Ensure that potential entrants to the industry have sufficient preliminary information to enable proper assessment and informed investment decisions.

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4. PRINCIPLES OF THE GRID CAPACITY ALLOCATION RULES

4.1 The NSP must adhere to the following principles in the provision of grid access:

a) Non-Discriminatory Access: Third parties must be granted equal access to the grid, encouraging competition and fairness.
b) Protection of Existing Customers: The rights and responsibilities of current customers are safeguarded, ensuring their interests are not jeopardised by new connections or projects.
c) Compliance with the Grid Code: Any parties seeking to connect to the grid must follow the standards and guidelines established in the Grid Code, which governs technical and operational practices.
d) Fair Access Process: Access to the grid must be granted through a transparent and fair procedure, reducing barriers for legitimate connections.
e) Capacity Limitations: Network service providers have the right to refuse access if they lack the necessary capacity to accommodate additional connections.
f) Information Costs: Parties requesting information about network capacity may be charged a reasonable fee, which will help to cover the costs associated with providing such information.

5. APPLICABILITY OF THE RULES

5.1 These rules apply to NSPs that are legal entities licensed to provide network services through the ownership, operation, and maintenance of an electricity network. The scope of application encompasses electricity transmission and distribution activities, including the following:

a) A licensee or its appointed representative that constructs, operates and maintains the distribution network.
b) A licensee or its appointed representative that constructs, operates and maintains the transmission network.

5.2 As licensed entities, Network Service Providers (NSPs) are subject to the enforcement of these rules in accordance with their license conditions.

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6. INFORMATION REQUIRED TO BE MADE AVAILABLE TO THE PUBLIC

6.1 The NSPs shall develop the TDP on an annual basis and ensure its availability to the public by publishing it on the NSP's official website

6.2 The NSP shall develop the NDP every three years and make it available to the public upon request.

6.3 The Grid Code, as an extension of the Act, mandates to indicate available network capacity by publishing the TDP and making the NDP available upon request

6.4 The NSP may charge a reasonable fee, to provide any person with information relating to the network capacity and measures that would be necessary to reinforce the network, upon application.

7. CONNECTION PROCESS REQUIREMENTS

7.1 NSPs must establish their own specific requirements and processes which aligns with the requirements of the Act, Electricity Pricing Policy, the Rules, the Grid Code and the NRS 047, and

7.2 Access to capacity will be granted on first ready first served basis, based on the following criteria:

a) Project readiness in terms of construction start date.

b) Supplementary regulatory approvals and clearances in place.

c) Necessary contracts for construction in place.

d) Completeness of design.

e) Construction duration and reasonableness thereof.

f) Any risks that may impact project commissioning dates, along with the corresponding mitigation measures.

g) Completeness of the financial arrangements

7.3 NSPs shall reserve all rights to revoke any grid capacity reserved for a specific project and/or to reallocate that grid capacity to another project based on any failure by the applicant to comply with any stipulated timelines

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in the Cost Estimate Letter, Budget Quote, connection agreements, and other related agreements.

8. THE QUEUING PROCEDURE

NSPs must develop a fair and transparent queuing procedure to manage multiple applicants and ensuring equitable treatment of all applicants. This procedure must not cause an applicant to lose its place in the queue if the capacity available is insufficient to cover its application and such capacity is passed on to an applicant for whom the capacity is sufficient.

9. DISPUTES

Unresolved disputes between the NSP and the applicant arising from the implementation of these rules, shall be referred to NERSA for resolution by means of mediation and/or arbitration.

10. IMPLEMENTATION DATE

These Rules shall be published in the Government Gazette and comes into operation on a date determined by the ER.

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