South African Photovoltaic Industry Association

011 553 7264
rethabile@sapvia.co.za
www.sapvia.co.za

Date: 29th July 2025

**Re: Submission to Draft Grid Capacity Allocation Rules**

Dear Mr Shozi

As the solar PV industry in South Africa, we appreciate the opportunity to make submissions to the National Energy Regulator of South Africa (NERSA) in response to a widely welcome effort on consultation paper proposing Draft Grid Capacity Allocation Rules. These rules consider grid connection capacity shortages and the rapidly growing renewable and industry in and the dynamic nature of the electricity generation market. SAPVIA commends NERSA for initiating this all-important process

I am writing on behalf of the South African Photovoltaic Industry Association (SAPVIA), which represents the interests of over 700 members across the solar PV value chain in South Africa. These members include project developers, Independent Power Producers (IPPs), commercial banks (such as Absa, Standard Bank, Nedbank, and the FirstRand Group), research institutions (including the CSIR), local manufacturers, international original equipment manufacturers (OEMs), installation and operations & maintenance providers, legal and EPC service firms, as well as a broad spectrum of SMMEs.

Many of our members such as project developers, Independent Power Producers (IPPs), and Engineering, Procurement, and Construction (EPC) firms are directly impacted by grid capacity challenges. Others, including financiers, are also affected by these constraints. It is on this basis that we wish to make this submission. Our position is shaped by input received from our members through various communication platforms, source from grid experts that form part of the Grid Access Working Group and is further reinforced by prior work undertaken through the joint renewable energy industry Grid Task Team, which engaged directly with Eskom and other key industry stakeholders in June and July 2023.

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In light of this request for submission, it is important to reflect on the previous contribution made by the Renewable Energy Grid Access Task Team to the development of Grid Capacity Allocation rules, specifically the Eskom's Interim Grid Capacity Allocation Rules (ICGAR). That position, informed by direct input from members and the Grid Access Working Group, was submitted on 7 July 2023 and primarily focused on proposed improvements to the IGCAR. These included, but were not limited to, environmental consents and authorisations, power purchase agreements or heads of terms, the appointment of design consultants, and measured data for primary energy resources. Moreover, that earlier submission provided recommendations on how guarantees should be managed and under what circumstances awarded capacity could be revoked.

We will draw on these previous insights, newly submitted members' input, direct engagements by the SAPVIA's Grid Access Working Group. This submission is largely aligned to submissions business constituencies and industry associations.

The rest of SAPVIA's input will be structured in alignment with the key themes of the draft Grid Capacity Allocation Rules, which are organized around four core questions designed to unpack the framework's objectives, namely:

i Principles of the Grid Capacity Allocation Rules
ii Connection process requirements
iii The queuing procedure
iv And the legal mandate

## PRINCIPLES OF THE GRID CAPACITY ALLOCATION RULES

The principle of the rules is that network service providers must allow non-discriminatory access to ensure fair, transparent, equitable and open access to the grid to give effect to the first ready, first served principle.

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**QUESTION 1:**

Do you think that the principle of non-discriminatory access should be based on the principle of first ready, first served? Please provide your view.

Drawing on input from our diverse membership, we broadly support the principle of '***first ready, first served'*** as the basis for non-discriminatory grid capacity allocation. However, its successful implementation must be carefully structured to promote orderly development, discourage speculation, and ensure equity across all market participants.

**Defining What "First Ready, First Served" Should Entail**

Members agree that readiness should not be a vague or superficial label, rather, it must be determined through clear, objective criteria. These may include:

- Demonstrated technical feasibility
- Secured land rights and permitting approvals
- Financing arrangements in place
- Progress on offtake agreements or commercial structures

In addition, members highlighted the importance of flexibility at the Connection Execution Letter (CEL) stage, allowing for legitimate upscaling or downscaling of project capacity where scope has changed. This nuance reflects a practical understanding of development realities and should be accommodated within the rules.

**Unfairness of Not Implementing This Approach**

Several members emphasized the inequities that arise if '***first ready, first served'*** is not applied. Without it, junior developers may face discrimination due to asymmetric resource constraints especially in the context of obtaining offtake agreements under mechanisms like IGCAR. For example, one member noted that requiring evidence of commercial arrangements months before CEL expiry disproportionately affects smaller players compared to IPPs.

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Members were of the view that whilst international models (e.g., Spain) prioritise grid access earlier in the process, for South Africa's evolving development ecosystem, it is more appropriate to align grid allocation with key derisking milestones. This ensures development proceeds in a phased, sustainable manner and mitigates financial exposure.

**CONNECTION PROCESS REQUIREMNTS**

The connection process requires an applicant to submit to the relevant NSP proof of project readiness, in the form of:

a) the construction start date;
b) supplementary regulatory approvals and clearances documents;
c) necessary contracts to show that construction is or will be in place, on time;
d) completeness of design;
e) construction duration and reasonableness thereof; and
f) completeness of the financial arrangements.

**QUESTION 2:**

Do you think the aspects listed as criteria for the connection process are adequate and relevant? Please provide your view.

**a) Construction Start Date**

SAPVIA's position:

- The proposed requirement for a construction start date is broadly understood as necessary for project planning. However, multiple members emphasised that this date can only be indicative at readiness stage, as the actual start depends on Budget Quote (BQ) issuance and CEL progression.
- Some members cautioned against penalising developers for timeline shifts driven by factors beyond their control, including NSP delays and grid allocation uncertainties.

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**Recommendations:**

- Reframe this criterion to require a projected construction schedule linked to milestone forecasting, with flexibility for adjustment post-grid confirmation.
- Ensure readiness assessments accommodate variations in start dates without compromising eligibility.

### b) Supplementary Regulatory Approvals & Clearances

SAPVIA's position

- While there's general acceptance of this criterion as fundamental, concerns were raised around dependency on NSP processes and regulatory bottlenecks, which can delay approvals despite a developer's good faith efforts.
- Some members indicated that without flexibility, readiness assessments could unfairly exclude capable projects caught in slow administrative cycles.

**Recommendations:**

- Introduce contextual discretion where delays are attributable to third parties (e.g., NSPs or environmental authorities).
- NERSA should publish guidance notes on acceptable documentation and timelines to promote clarity, consistency, and fairness in interpretation.

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### c) Necessary Construction Contracts

SAPVIA's position:

- This criterion drew strong concern across stakeholders. Requiring final EPC contracts at early stages is viewed as commercially unrealistic and misaligned with how financing works in South Africa and globally.
- As one member highlighted, secured grid access is a prerequisite for concluding EPC terms and financing, not the other way around. Forcing early contracting may:
    - Raise unnecessary financial risk
    - Inflate costs through rushed procurement
    - Trigger penalties if grid access is later denied

**Recommendations:**

Adopt a tiered readiness framework:

- *Preliminary Readiness:* Site control, permits, EPC tender initiation, indicative financing strategy
- *Final Readiness:* Executed EPC contracts, confirmed financial close, detailed construction plan

This sequencing enables developers to move forward responsibly while preserving the credibility of grid access decisions.

### d) Completeness of Design

SAPVIA's position:

- Few stakeholders opposed this outright, but several noted that final designs are dependent on confirmed grid connection points, integration scope, and timelines.

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- Early design completeness is impractical and may result in duplication, rework, or misaligned outcomes.

**Recommendations:**

- Replace "completeness" with *"appropriate level of design maturity",* benchmarked against project stage and grid study progress.
- Allow for *design evolution* post-grid allocation, supported by clear tracking of design updates.

### e) Construction Duration & Reasonableness

SAPVIA's position**:**

- Duration and scheduling need to accommodate different project profiles and external delays. There is support for this position, however, there is emphasis on the fact that NSP delays, permitting hold-ups, and environmental appeals may prolong timelines legitimately.
- Stakeholders want assurance that developers won't be penalized unfairly due to such uncontrollable delays.

**Recommendations:**

- Apply reasonable duration expectations flexibly, with built-in allowances for documented delays outside developer control.
- Consider milestone-linked reporting to track real progress rather than relying on fixed-duration targets alone.

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### f) Financial Arrangement Completeness

SAPVIA's position:

- There is a broad consensus that requiring full financial closure before grid allocation is generally unfeasible and in some instances, counterproductive.
- Without grid access confirmation, banks and investors typically won't commit to final funding agreements.
- Several members proposed a graduated financial readiness model, balancing credibility with realism.

**Recommended Structure:**

- Tiered Guarantees:
  - Large utility-scale projects submit substantial guarantees
  - Smaller or earlier-stage developments contribute proportionally
- Refundable Mechanism:
  - Tie guarantee returns to milestone achievements (e.g. permits, EPC draft submission)
- Delay Protections:
  - Introduce exemptions for NSP delays, force majeure, or regulatory backlogs
- Inclusivity:
  - Ensure that emerging developers, community-based projects, and just transition initiatives aren't excluded due to stringent financial criteria

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**THE QUEUING PROCEDURE**

NSPs must develop their own queuing procedure to address multiple applicants and to ensure that certain applicants do not monopolise the grid. It must also ensure that an applicant does not lose its place in the queue if the capacity is insufficient (while awaiting grid strengthening) by being overtaken by another applicant who might have been at the back of the queue. The queuing procedure developed by NSPs must be transparent enough to disclose who is in the queue and numbers must be allocated to the applicants who are in the queue.

**QUESTION 3:**

Do you think that the queuing procedure should be transparent to the extent of disclosing who is in the queue and what position the applicant is holding in the queue? Please provide your view.

**1. Support for Transparency and Public Access**

There is expressed strong support for a transparent queuing procedure:

- Transparency fosters fairness, efficiency, and market integrity.
- Public visibility enables applicants to avoid congested nodes and reduces speculative or opportunistic behaviour.
- Ensures applicants are treated fairly and positions in the queue are traceable.

**Recommendations**:

- A **live-access database**
- Monthly publication of **updated queue reports**
- Visibility into grid access demand to support better planning and policy alignment
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**2. Disclosure of Technical and Geographic Project Details**

There is strong alignment around what kinds of project information should be disclosed:

- Node/Substation location
- Requested capacity
- Generation technology

Queue status (e.g., under **review**, allocated, pending milestone verification)

This data allows market participants to:

- Plan realistically.
- Strategize around congestion risks.
- Support policy decisions with clearer system-wide visibility

**3. Balancing Transparency with Commercial Confidentiality**

While transparency is valued, concerns were raised about protecting sensitive commercial data:

- Members cautioned against disclosing applicant names or identities, especially in competitive bidding contexts or during early-stage negotiations.
- Proposed solution: use anonymised reference numbers, while still disclosing key project attributes.
- A secure mechanism for applicants to confidentially verify their queue status was also recommended.

This ensures that:

- Transparency doesn't compromise competitiveness.
- Developers maintain leverage in negotiations and partnerships.

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**4. Operational Recommendations for NSPs**

There is consensus on improving how NSPs manage and publish queue data:

- Establish a centralized, regularly updated queuing portal.
- Ensure queue reports include relevant, non-identifiable project details.
- Implement verification tools for applicants to track their own status.

These recommendations align with best practices in liberalised electricity markets and aim to:

- Reduce disputes over prioritization.
- Boost investor confidence.
- Enforce non-discriminatory access principles.

**LEGAL MANDATE**

Section 21(4) of the ERA states that 'access in terms of subsection (3) must be provided on the conditions set out in the licence of such transmitter or distributor'. This relates to the circumstances under which access must be granted or be refused.

**QUESTION 4:**

In light of section 21(4) of the ERA, do you think it is the responsibility of licensees to develop the Grid Capacity Allocation Rules and submit them to the Energy Regulator for approval in terms of section 4(a)(vii), which states that the Energy Regulator must 'enforce performance and compliance with this Act and licence conditions imposed by the Regulator in terms of this Act, and take appropriate steps in the case of non-performance or non-compliance'? Please provide your opinion.

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## 1. Regulatory Authority & Legal Mandate

There is robust legal arguments affirming that NERSA is the sole body empowered to develop Grid Capacity Allocation Rules:

- A large contingent of our members rigorously interprets Section 4(a)(iv) of the **Electricity Regulation Act (ERA)** to establish that NERSA is the competent authority for rule-making. NSPs (Network Service Providers), by contrast, are **licensees**, not lawmakers.
    - The general view is that the Act intentionally identifies specific entities who may develop rules (e.g. the market operator under Section 34B(3)(b)), and NSPs are not among them.
    - Section 21(4), which deals with licensing conditions, is highlighted as a mechanism of oversight, not delegation. The view is that NERSA sets conditions but cannot delegate its regulatory mandate to NSPs.

## 2. Centralised Framework for Consistency, Transparency, and Fairness

Most of our IPP members' views converge around a common theme: grid allocation rules require centralised development and oversight by NERSA to avoid institutional fragmentation.

- Specially there is interpretation that:
    - NSPs, while operationally significant, should be contributors**,** not architects, of grid capacity frameworks.
    - Central rulemaking ensures national alignment, supports policy coherence, and sustains a level playing field across geographic zones and operator jurisdictions.

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- There is strong caution against 'separate frameworks' by individual NSPs—describing this as a threat to system efficiency and stakeholder confidence.

### 3. Governance, Conflict of Interest & Market Neutrality

There are firm view that NSP rule-making as a potential risk to the integrity of market governance:

- Operational conflicts of interest may arise if NSPs both operate the network and write the rules governing access—particularly where NSPs have ties to internal or affiliated generators.
- This setup could lead to:
    - Institutional bias
    - Regulatory inconsistency across regions
    - Higher transaction costs for developers and Independent Power Producers (IPPs)

### 4. Implementation Role of NSPs

Across submissions, there is a clear consensus that NSPs should **implement** rules, not create them:

- They are operational custodians of the grid, and their role should be tied to executing NERSA-approved frameworks.
- Their expertise contributes to technical input, but regulatory development must remain centralised to avoid self-serving designs.

Some stakeholders are suggesting enhancements to the governance model that could prevent abuse and ensure accountability:

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- Standardised implementation protocols, including clear timelines, transparency checks, and dispute resolution mechanisms, should be embedded in NERSA's framework.
- Any NSP decisions made under these rules should be subject to appeals or review either through NERSA or a designated independent adjudicator.

**Conclusions**

SAPVIA members strongly support "First Ready, First Served" (FRFS) model, recognising it as a more efficient and equitable approach to grid access. It prioritises projects that are genuinely prepared to proceed and helps unblock capacity currently held by speculative or stalled developments. However, members caution that for FRFS to be effective, it must be underpinned by clear, consistent criteria for assessing readiness across all NSPs. Without this, the principle risks being inconsistently applied and could disadvantage smaller or emerging developers who may require longer lead times to secure commercial agreements or financing.

The success of this model also depends on aligning grid allocation with key project milestones, ideally after sufficient project de-risking but before major financial commitments are required. Flexibility must be built into the system to accommodate changes in project scope post-CEL without forfeiting queue positions. SAPVIA urges NERSA to adopt a pragmatic, transparent and inclusive approach that reflects the varied realities of developers in the market. With the right implementation, transparent grid capacity allocation rules can address the backlog and accelerate project development.

Kind Regards

**Dr Rethabile Melamu**
SAPVIA Chief Executive Officer