



CONSULTATION PAPER

MARKET CODE APPLICATION BY NTCSA

Issued by:

The National Energy Regulator of South Africa

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1. EXECUTIVE SUMMARY

- 1.1 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). NERSA's mandate is to regulate the electricity, piped gas and petroleum pipelines industries in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) ("the Act"), Gas Act, 2001 (Act No. 48 of 2001) and Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).
- 1.2 NERSA's regulatory framework, according to the Act, requires the achievement of several objectives, which include:
- safeguarding the needs of current and future customers;
 - achieving the efficient, effective and sustainable development of electricity supply infrastructure;
 - facilitating investment;
 - promoting universal access;
 - promoting competitiveness and customer and end-user choice; and importantly
 - facilitating a fair balance between the interests of customers and end users, licensees, investors in the electricity supply industry and the public.
- 1.3 The South African electricity supply industry is undergoing structural reform aimed at introducing a competitive wholesale electricity market. As part of these reforms, the South African Wholesale Electricity Market (SAWEM), Market Code has been developed as a foundational regulatory and technical framework that defines the "rules of the game" for all participants. Its primary purpose is to ensure that the complex physical reality of generating and delivering power aligns with the commercial activities of buying and selling it.
- 1.4 The purpose of this consultation paper is to:
- Present the proposed SAWEM Market Code and Market Rules (attached as **annexure A**).
 - Invite stakeholder input on the code and the operational rules of the market.
 - Identify potential implementation risks and regulatory gaps.
- 1.5 This consultation process and the Energy Regulator's approval aim to ensure the Market Code and Rules align with South Africa's Energy Policy and regulatory frameworks, including the Electricity Regulation Act, 2006, the Electricity Regulation Amendment Act (ERAA), the Energy Policy of 1998, and the Municipal Finance Management Act (MFMA). Compliance with these instruments is critical to fostering sustainable development of the electricity supply industry.
- 1.6 The consultation paper seeks stakeholder input on the following scope, Roles and responsibilities of:
- The Market Operator;
 - NERSA;
 - System Operator;
 - Market Participants; and

- Network Operator.
- Governance arrangements;
- Requirements and qualifying criteria of Market participants;
- Market operations and settlement processes;
- Compliance and monitoring mechanisms; and
- Dispute management.

1.7 Furthermore, in making its decision, NERSA must satisfy the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). It is based on the above that NERSA requires to undertake a public participation process for the approval of the Market Code and Market Rules, which enables it to appropriately apply its regulatory views and decision making prior to approval of the Code.

1.8 It is based on the above reasoning that NERSA is requesting stakeholders to comment on the Market Code and Market Rules, as set out in this consultation paper. Stakeholder participation will ensure that the Market Code promotes transparency, competition, efficiency, and system reliability in the electricity sector.

The comments should be sent to NERSA for the attention of:

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The deadline for the submission of comments is **29 May 2026**.

Kindly provide the name, address, Mobile or Telephone number and email address of the person or organisation submitting the comments.

Submissions made after the deadline stipulated above will not be considered.

2. GLOSSARY OF TERMS

Act	The Electricity Regulation Act 4 of 2006, as amended, and the regulations made there under.
Balance Responsible Party	A licensed or registered generator, distributor or trader that is responsible for the balance responsible activities, and which is accountable through the balancing mechanism for deviations.
Balancing Mechanism	A mechanism used by the system operator to balance the supply and demand of electricity in real time on the power system by cost effective dispatching of generation and demand resources; for clarity this refers to the Balancing process in the SAWEM.
Day Ahead Market	The wholesale electricity market platform for the trading of electrical energy which operates day-ahead, i.e. ex ante, with Market Participants submitting bids and offers for Energy, and the Market Operator clearing contracts between itself and Market Participants.
Intra-Day Market	The wholesale electricity market platform for the trading of electrical Energy which operates after the Day-ahead Market but before real-time operation (gate closure one hour before real-time) with Market Participants submitting bids and offers for Energy, and the Market Operator clearing contracts between itself and Market Participants.
Market	The platform that facilitates the trade of products and services.
Market Governance Committee	The committee established by the Market Operator to provide oversight over the SAWEM and the Market Code.
Market Operator	The person licensed to operate a trading platform for power market participants and who takes no ownership of the Energy traded, and fulfils the requirements of the Act and this Market Code.
Market Participant	A Party that participates in the Day-Ahead and Intra-Day Markets in the SAWEM and is a BRP for trades undertaken on these platforms.

Modification Proposal	Any proposal to modify this Market Code through a proposal which is submitted to the MGC.
Modification Subcommittee	The subcommittee established by the Market Governance Committee to provide advice regarding the Market Code and Modifications thereto.
NERSA	The legal entity established in terms of the National Energy Regulator Act 4 of 2004 as amended.
Network Operator	A transmission or distribution licensee.
Party	A Market Participant, Network Operators, System Operators, the Market Operator or any other person governed by this Market Code.
Real Time Dispatch Schedule	The actual schedule for a Trading Unit.
Trader	A person that holds a trading licence issued by NERSA.
Trading Unit	An aggregated construct of production and/or consumption components established by a Market Participant with the following conditions: a) Trading Unit may not be aggregated across more than one Network Zone; b) The Maximum Continuous Rating of a Trading Unit of a Generator cannot be greater than 1000 MW unless approved by the SO; and c) The metering configuration of the Trading Unit must encompass all the Energy production and consumption of the Trading Unit.

3. ACRONYMS

BRP	Balance Responsible Party
DAM	Day-Ahead Market
DRB	Dispute Resolution Board
ELS	Electricity Subcommittee
ER	Energy Regulator
ERA	Electricity Regulation Act 4 of 2006
IDM	Intra-Day Market
MGC	Market Governance Committee
MO	Market Operator
MSU	Market Surveillance Unit
NERSA	National Energy Regulator of South Africa

NSP	Network Service Provider
NTCSA	National Transmission Company South Africa
RfD	Reasons for Decision
SAWEM	South African Wholesale Electricity Market
SO	System Operator

4. BACKGROUND

- 4.1 South Africa's electricity sector is undergoing a transformation towards a more competitive and transparent market structure. Traditionally, the electricity supply industry operated under a vertically integrated model, where generation, transmission, system operation, and market administration functions were centralized within a single institutional framework.
- 4.2 The electricity sector reforms aim to transition to a competitive and transparent market structure that enables the participation of multiple electricity generators, traders, and large consumers. The creation of a wholesale electricity market is therefore designed to streamline the trading of electricity among market participants, incentivize investment in new generation capacity, optimize operational efficiency within the electricity supply industry, and foster greater transparency in electricity pricing and market operations.
- 4.3 However, the successful establishment of a wholesale electricity market requires the development of a comprehensive regulatory framework that fosters confidence in market operations, guarantees transparency, and ensures equitable and non-discriminatory participation for all eligible market participants in the electricity market. To achieve these objectives, the Market Code has been designed to encompass the following key elements:
- **Market Types:** Establishment of various market structures essential for the effective and secure operation of the electricity industry, including provisions for physical and financial transactions among power market participants across appropriate timescales, facilitating both market-based and regulated transactions.
 - **Operational Framework:** Specification of the methods of operation, along with the development of systems, processes, and procedures required for the successful implementation and management of these markets.
 - **Reconciliation Mechanisms:** Inclusion of provisions to address imbalances between scheduled and actual electricity production and consumption by market participants, as well as the allocation of costs for remedial actions and penalties where applicable.
 - **Participant Qualification Criteria:** Definition of eligibility requirements for power market participants, including financial and prudential standards to ensure market stability and integrity.
 - **Market Code Governance:** Establishment of governance structures and processes, including mechanisms that allow market participants and stakeholders to propose amendments to the code, ensuring its continuous improvement and relevance.
 - **Additional Provisions:** Incorporation of any other necessary elements to ensure the effective and efficient operation of the wholesale electricity market, supporting transparency, competition, and equitable access for all participants.

- 4.4 The Market Code and Market Rules are designed to facilitate the establishment of a transparent, competitive, and sustainable electricity market in South Africa. Through this consultation paper, NERSA invites your valuable participation to contribute to the development of the Market Code and Rules, ensuring they effectively achieve the objectives outlined above.

5. LEGAL MANDATE

- 5.1 The legal and regulatory basis for this transition is supported by amendments to the Electricity Regulation Act 4 of 2006 (ERA), particularly through the introduction of sections 34A and 34B, as well as section 35. These provisions strengthen the regulatory mandate for the development and oversight of electricity market structures and provide the statutory foundation for the establishment of an organised wholesale electricity market in South Africa.
- 5.2 The preamble of the Act recognises the importance of establishing a regulatory framework that facilitates the efficient generation and supply of electricity while in doing so, the Act seeks to promote the sustainable and orderly development of the electricity supply industry, improve the efficiency and effectiveness of the electricity sector, and ensure that electricity services are provided in a manner that is consistent with national energy policy objectives.¹ Within this framework, the National Energy Regulator of South Africa is mandated to regulate the electricity industry through licensing, oversight, and the development of regulatory instruments designed to promote transparency, efficiency, and fairness in the electricity market.²
- 5.3 **Section 4 (a)** of the ERA which outlines the powers and duties of the Regulator. These powers include the authority to:
- a) Issue licences for electricity sector activities including generation; transmission, distribution, trading, market operation and system operation;
 - b) Issue rules designed to implement the national government's electricity policy framework and the provisions of the Act;
 - c) Establish monitoring and information systems relating to regulated activities; and
 - d) Enforce compliance with licence conditions and regulatory requirements.
- 5.4 These provisions empower the Regulator to establish and approve rules governing the functioning of electricity markets:
Section 34A provides for the establishment of a Transmission System Operator responsible for facilitating an open market platform that allows for competitive electricity trading. The purpose of this provision is to enable the transition to a competitive electricity market structure in South Africa. Additionally, the open market platform forms the institutional basis for the wholesale electricity market governed by the Market Code.

¹ Section 2

² Section 4

- 5.5 **Section 34B** of the Act provides the legal foundation for the development of the Market Code. In terms of this section:
- The Market Operator must provide a transparent and non-discriminatory trading platform for electricity market participants;
 - The Market Operator must develop a Market Code and market rules, including qualifying criteria for market participants;
 - The Market Code and rules must be approved by the Regulator; and
 - The Market Code therefore forms part of the regulatory framework governing the operation of the electricity market.
- 5.6 Section 35 provides the Regulator with authority to develop and publish rules, guidelines and codes of conduct and practice after consultation with stakeholders. This includes rules relating to:
- Electricity trading;
 - Technical and operational standards;
 - Information reporting and compliance requirements; and
 - Any administrative matter necessary for the proper implementation of the Act.
- 5.7 This rule-making authority enables the Regulator to approve and enforce the Market Code as a regulatory instrument governing electricity market operation.

6. OVERVIEW OF THE PROPOSED MARKET CODE

- 6.1 The proposed Market Code is therefore developed as a key regulatory instrument intended to operationalise the objectives of the ERA and to provide the detailed governance and operational rules necessary for the functioning of a wholesale electricity market.
- 6.2 The Market Code is therefore developed to provide:
- The different types of markets necessary to ensure effective and secure operation of the industry including both physical and financial transactions between power market participants in the appropriate timescales, to enable the market transactions and regulated transactions;
 - the method of operation, as well as development of systems, processes and procedures for the implementation of these markets;
 - provisions for reconciliation in order to identify imbalances between scheduled and actual production, the consumption of electricity by power market participants, and the allocation of costs of remedial action and penalties where applicable;
 - the qualifying criteria for power market participants, including financial and prudential requirements;
 - governance of the market code, including mechanisms for power market participants and stakeholders to propose changes to the code; and
 - any other aspects necessary for effective and efficient market operation.

- 6.3 Further, the Market Code establishes the governance, operational, and compliance framework governing participation in the wholesale electricity market. In particular, the Market Code provides the rules governing market participation, electricity trading arrangements, system scheduling and dispatch procedures, balancing responsibilities, settlement mechanisms, and dispute resolution processes. These rules are intended to ensure that electricity trading activities are conducted in a transparent and predictable manner while maintaining the operational reliability and stability of the national power system.
- 6.4 From a compliance perspective, the Market Code also establishes the obligations of market participants and defines the mechanisms through which compliance with market rules will be monitored and enforced. These are essential to ensuring that the electricity market operates in a manner that promotes fair competition and prevents anti-competitive conduct or market manipulation.

7. KEY CONSULTATION QUESTIONS

7.1 Roles and Responsibilities

- 7.1.1 **Market Operator (MO)** is responsible for the development of the Market Code and Rules. It will also administer, operate and manage the market platform for electricity trading between market participants. Additionally, the code specifies that the MO must facilitate the process of market clearing, settlement and maintaining market data and information.
- 7.1.2 **NERSA** is the Regulatory authority over the electricity market and will have oversight over the trading platform. The regulator is mandated to approve the Market Code and consider any modification proposals of the Market Code.
- 7.1.3 **System Operator (SO)** shall schedule and dispatch generation and demand-side resources based on the MO instructions while ensuring system security. The SO is allowed to take mitigating measures in line with its license conditions in the event demand needs are insufficient. A constrained scheduling model for the purposes of producing constrained day-ahead and intra-schedule shall be defined by the SO.
- 7.1.4 **Market Participant** shall adhere to Market Code obligations. A Market Participation Agreement must be concluded prior to participation in the market.
- 7.1.5 **Balance Responsible Party (BRP)** is responsible for meeting imbalances between electricity generation and consumption within their portfolios. The effective functioning of the balancing framework is critical to maintaining the stability and reliability of the electricity system.
- 7.1.6 **Network Operator (NO)** must provide metering services and submit metering data to the MO for all delivery points within its jurisdiction. The NO is responsible for the billing of use-of-system charges to generators and loads to its jurisdiction. The NO must inform the MO should a BRP breach the associated use-of-system agreements.

1. Key Consultation Questions/Comments

- 1.1 Are the roles and responsibilities of the Market Operator, NERSA, and other entities clearly defined and sufficient to ensure effective market operation and fit for purpose for the proposed market structure?
- 1.2 What other responsibilities can be added to the different roles to support a transparent, fair, and non-discriminatory market?
- 1.3 Does the Market Code adequately address the role and conduct of distributors, such

- as municipalities, given their significant role as bulk purchasers of electricity?
- 1.4 Does the Market Code provide NERSA with sufficient powers and mechanisms to effectively exercise oversight over the wholesale electricity market?
- 1.5 Does the Market Code align with the regulatory powers and responsibilities granted to NERSA under the Electricity Regulation Act as amended, ensuring that the regulator can fulfil its mandate to promote fair competition, transparency, and protect the interests of all market participants

8. MARKET GOVERNANCE

8.1 Market Governance Committee (MGC)

- 8.1.1 The Market Operator (MO) shall establish a Market Governance Committee (MGC) that will be responsible for the modifications of the Market Code. The MGC shall monitor, enforce compliance, and issue sanctions to Parties as set by the Market Code. The MGC shall establish a Modification Subcommittee which will be responsible for ensuring a consultative process is followed in the review and modification of the Market Code.(The consultation on the proposed modification process is summarised by means of key consultation questions, as outlined in Table 1 found on Page 21 of 31).

2. Key Consultation Questions/Comments

- 2.1 Are the criteria for appointing Market Governance Committee members sufficient to ensure independence and to prevent conflicts of interest or undue influence?
- 2.2 Should additional measures be implemented to enhance governance and accountability, such as granting NERSA the authority to appoint members to the Market Governance Committee (MGC) and allowing NERSA to assume the role of chairperson for the MGC?
- 2.3 Does the code establish clear guidelines for stakeholder engagement, including public consultation for modifications to the Market Code, regular forums for feedback, and publication of consultation outcomes?
- 2.4 Do the rules that guide the modifications to the market code mitigate against sudden changes to the Market Code? Consider if the provisions set in the market code are sufficient to ensure long-term stability of the market.

8.2 Dispute Resolution Board (DRB)

- 8.2.1 In addition, the MGC shall establish a Dispute Resolution Board (DRB) to resolve disputes on an equitable basis in accordance with the following provisions of the Market Code:

- The Dispute Resolution Board (DRB) is established to facilitate a dispute resolution process that is simple, efficient, and cost-effective. A dispute resolution processes and the selection of a DRB member must comply with the requirements set out in section 4.4.
- The Dispute Resolution Board (DRB) is established to facilitate a dispute resolution process that is simple, efficient, and cost-effective. The process is designed to encourage the resolution of disputes without the need for formal

legal representation or reliance on complex legal procedures. All dispute resolution processes must comply with the requirements set out in section 4.4(2)(b).

- A Notice of Dispute may be issued by any Party on any number of Parties. A Party may issue a Notice of Dispute if it is dissatisfied with the MO's determination regarding a Settlement Query or Data Query. The procedures, conditions, and timelines governing the submission of a Referral Notice to the DRB, the issuance of a decision by the DRB, and the referral of a dispute to arbitration are set out in sections 5.1.2, 5.1.3, and 5.1.4.

- 2.5 Do you believe the current dispute resolution process is effective in resolving disputes in a timely and equitable manner? If not, what changes would you recommend?
- 2.6 Are the timelines and procedures for resolving disputes clear and sufficient?
- 2.7 Should additional steps be introduced to streamline the dispute resolution process?
- 2.8 Is NERSA's role in the resolution of disputes clearly defined? How can NERSA ensure that the decisions of the DRB are fair and impartial?
- 2.9 Should NERSA have a more active role in mediating disputes between Market Participants and other stakeholders? If so, what should this role entail?

8.3 Market Surveillance Unit

- 8.3.1 The Market Operator shall establish the Market Surveillance Unit (MSU), which will be responsible for monitoring market behaviour to identify and address any improper conduct by Market Participants. The MSU will ensure that all Market Participants adhere to the Market Conduct Rules, thereby promoting fair competition and maintaining compliance within the market.
- 8.3.2 The MSU ensures that both market participants and the MO comply with the Market Code, Market Conduct Rules, and prescribed timelines. The MSU holds authority to act on behalf of the MO in matters relating to market conduct, including requesting relevant information necessary for monitoring and investigations. The MSU is empowered to investigate suspected breaches, requiring timely and comprehensive information from market participants and balancing the interests of the responsible parties.

- | | |
|------|---|
| 2.10 | What additional provisions could be introduced to strengthen the MSU's ability to monitor and address market misconduct? |
| 2.11 | Are the market surveillance mechanisms described in the Market Code adequate to detect and address anti-competitive behaviour? |
| 2.12 | Are the enforcement measures for non-compliance or market abuse clearly defined? |
| 2.13 | What specific measures should NERSA implement to ensure the Market Surveillance Unit (MSU) operates in alignment with the Market Code and Market Conduct Rules? |
| 2.14 | How can NERSA effectively monitor the MSU's activities to ensure it identifies and addresses instances of market abuse or non-compliance? |
| 2.15 | What criteria should NERSA use to evaluate and approve the operational framework, methodologies, and procedures of the MSU? |
| 2.16 | How can NERSA ensure that the MSU's operations promote transparency, fairness, and non-discrimination in the market? |
| 2.17 | What mechanisms should NERSA establish to hold the MSU accountable for its performance and compliance with the Market Code? |
| 2.18 | How frequently should NERSA conduct audits of the MSU to assess its effectiveness and compliance with prescribed rules? |
| 2.19 | What key performance indicators should NERSA use to evaluate the MSU's efficiency and success in achieving its mandate? |

9. MARKET PARTICIPATION

9.1 Market Participants are required to adhere to the admission process established by the Market Operator (MO) in order to participate or trade in the wholesale market. Applicants must satisfy the stipulated registration, technical, and financial requirements to qualify as a Party. Once admitted, Participants will be subject to the enforcement provisions outlined in the Market Code to ensure compliance with its rules and regulations. Annexure 1 of the Market Code outlines the qualifying criteria for a Market Participant are:

- A Generator with a capacity threshold of 100kW and above, connected or embedded in a customer network that is connected at high-voltage or medium-voltage, which is licensed or registered by NERSA, may apply to be a Market Participant;
- Any licensed Trader;
- A licensed Distributor or Transmission entity;
- An entity with an Import/Export license; and
- A consumer connected at high-voltage or medium-voltage.

3. Key Consultation Questions/Comments

- 3.1 Consider if the admission requirements for participation in the market are clearly defined, transparent, and non-discriminatory?
- 3.2 Should the qualifying criteria be expanded to accommodate additional category(s) of market participants? How can the code be improved to include measures to support their participation?
- 3.3 Do the provisions in the code prohibit preferential treatment of certain participants? Consider how the code can promote competition to ensure a level playing field for all participants?
- 3.4 Are the qualifying criteria for market participants adequate to ensure financial stability and market integrity?
- 3.5 Should additional measures be introduced to address the risk of default and ensure compliance with the Market Code?
- 3.6 Are the provisions for suspension and termination of market participants sufficient to protect the interests of other stakeholders?

10. ELECTRICITY TRADING-TIMEFRAME MARKET MODELS

10.1 The Day-Ahead Market (DAM)

- 10.1.1 The Day-Ahead Market enables Market Participants to submit daily bids for a Trading Unit for the upcoming Trading Day prior to the day-ahead gate closure. Submissions must adhere to the format and timing requirements specified in the Market Code and the schedule framework. The Market Operator (MO) will utilise a dispatch algorithm designed to minimise the total cost of generation necessary to meet the forecasted demand. Day-Ahead Trading Unit prices will be determined for all trading periods within the Trading Day. The Market Code outlines the methodologies for calculating Day-Ahead unit prices, system prices, settlements, and energy payments, ensuring transparency and consistency in market operations.

4. Key Consultation Questions/Comments

- 4.1 Are the objectives of the Day-Ahead Market clearly defined and aligned with broader electricity market reforms?
- 4.2 Consider if the provisions for bidding formats, timelines for bid submission, and data requirements are appropriate for operational flexibility?
- 4.3 Does the market code make provisions for data accessibility to support informed trading decisions? Consider if additional data must be published on the trading platform to ensure informed trading decisions in the DAM.
- 4.4 Do the trading mechanisms outlined in the Market Code promote fair competition and efficient price discovery?
- 4.5 Are the provisions for balancing mechanisms and reconciliation adequate to ensure system reliability and equitable cost allocation?
- 4.6 Are the financial settlement processes and credit cover requirements sufficient to ensure market liquidity and minimize financial risks?

10.2 Intra-day Market (IDM)

10.2.1 The Intra-day Market allows Market Participants to re-declare declared available capacity and declared consumption, which must be submitted prior to the gate-closure. Each intra-day auction will result in revised schedules of the Trading Units in accordance with the intervals specified in the Market Code. The MO shall publish the revised schedules of the expected generation or consumption to Market Participants based on the intra-day auction. The Mo shall determine if a Trading Unit is considered to purchase or sell energy “against instruction” or “on instruction” based on the specifications defined in the market code. Methods of determining Intra-day Prices, Intra-day Charges and Intra-day Payments are outlined in market code.

- 4.7 Consider if the provisions for the IDM effectively allow Market Participants the opportunity to re-declared declared generation and consumption?
- 4.8 Does the market code make provisions for data accessibility to support informed trading decision? Consider if additional system data information must be published to ensure informed trading decisions in the IDM?
- 4.9 Does the pricing methodology support efficient price formation, and reduce exposure to imbalance charges?

10.3 Real-time Dispatch

10.3.1 The algorithm for trading participation considers the transmission network, distribution network and generator constraints. The SO shall maintain a log of system conditions which will be utilised for reasons for dispatch instructions to qualifying Trading Units. Non-dispatchable Trading Units may be expected to follow dispatch instructions in the case of Emergency Operating Condition or need for Load Reduction. The most recent intra-day market schedule shall constitute a dispatch instruction unless replaced by a manual or automatic dispatch instruction from the SO.

- 4.10 Consider if the real-time dispatch principle and methodology support non-discrimination to Trading Units. Is there sufficient information provided to market participants regarding real-time dispatch decisions?
- 4.11 Are processes for managing system constraints, deviations from market schedules managed in a transparent and predictable manner? Consider if additional mechanisms should be introduced to improve the visibility of constraints and market schedules to market Participants.

11. BALANCING MECHANISMS

11.1 For each Trading Period of the Trading Day the instructed energy output for each Trading Unit and actual metered energy output or consumption shall be determined. The total Imbalance Energy Bought and Sold shall be calculated in accordance with the market code specifications. Applicable Balancing Payments shall be published by the MO on the day following the Trading Day. Methods to determine the different Balancing Payments are defined in the market code.

5. Key Consultation Questions/Comments

- 5.1 Does the code sufficiently prevent the prioritisation of certain Market Participants when applying Balance Mechanisms?
- 5.2 Are there risks of market power in the provisions of Balancing Mechanism? Should additional safeguards be introduced to promote competition?

12. SETTLEMENT REPORTS AND FINANCIAL SETTLEMENTS

- 12.1 The MO is responsible for carrying out or procuring settlements for Trading Payments, Trading Charges, Charges to Market Participants, Fixed Market Operator Charges, and Variable Market Operator Charges. The market code describes financial timelines for settlement, billing, invoicing, debt notes and settlement re-runs. Market Participants may raise Data Queries, Settlement Queries, and Settlement Disputes in accordance with the market code conditions. The MO is authorised to recover unsecured bad debt, and unpaid MO charges.

6. Key Consultation Questions/Comments

- 6.1 Does the code support accurate, timely, and transparent financial transactions? Consider if reporting and settlement processes are standardised, administratively efficient, and are appropriate to support market participant cash flow and liquidity?
- 6.2 Does the code provide sufficient mechanisms to inspire investor confidence?

13. MODIFICATION PROCESS

- 13.1 The Modification Subcommittee is to process Modification Proposals and effectively facilitate the Modification Process as defined in the Market Code. If a Modification Proposal is approved by the MGC, it must be submitted to NERSA for consideration.
For the consultation question/comments see Table 1 on the next page.

14. JURISDICTION

- 14.1 The Code establishes the framework for market operations, including system balancing, contractual arrangements, and dispute resolution, with disputes generally subject to the jurisdiction of South African courts. At the same time, the Code enables participation in cross-border electricity transactions, which may be governed by regional arrangements such as the SAPP and involve counterparties operating under different legal systems.
- 14.2 In addition, provisions such as section 3(2)(4)(b) of ERA empower the SO to take actions to manage supply and demand, including in circumstances that may affect cross-border flows and contractual positions. This creates a need to clarify the interaction between domestic legal jurisdiction, regional market rules, and the scope of the SO's authority, particularly where such actions may give rise to disputes involving cross-border contracts.

7. Key Consultation Questions/Comments

- 7.1 In relation to cross-border transactions under the Code, is the applicable legal framework and dispute resolution jurisdiction sufficiently clear, particularly regarding the interaction between South African law, SAPP governance, and the law governing cross-border contracts, and what clarifications are required?
- CONS 7.2 Does section 3(2)(4)(b) of ERA provide sufficient clarity on the SO's authority to take actions affecting cross-border supply, including whether such actions require consultation with affected contractual parties, and how jurisdictional authority should be determined in the event of a dispute?

Table 1: Summary of Modification Process - Consultation Questions

CATEGORY	CODE SUMMARY CONTEXT	CONSULTATION QUESTIONS	Market Code Prescripts
Proposal & Submission	• Proposal Raised Any person, including the Market Operator or NERSA, submits a clear and substantiated Modification Proposal with draft amended text. • Secretariat Review Within 5 business days, the Secretariat submits the proposal to the Modifications Subcommittee and MGC and publishes notice. Urgency Check The MGC Chairperson determines whether the proposal is urgent.	8.1 Is the proposed modification step process clearly defined? 8.2 Is the requirement for the Secretariat to submit and publish a Modification Proposal within 5 business days practical? 8.3 Are these requirements for Modifications Subcommittee and MGC acceptable? If not provide a reasoned proposal.	4(3)(1)
Review & Assessment	• Urgent/Normal Route Urgent proposals follow an emergency, fast-tracked route; other proposals proceed through the normal meeting cycle. • Initial Consideration The proposer may present the proposal, and the Modifications Subcommittee conducts its first review. • Spurious Test The Subcommittee determines whether the proposal is spurious; rejection requires MGC written consent and written reasons. • Consultation & Analysis The Subcommittee may modify or combine proposals, consider alternatives, invite stakeholder views, and request impact analysis or expert advice. • Recommendation Development The Subcommittee considers all inputs and adopts its	8.4 Is the criteria, process and timelines for determining and handling Urgent Modification Proposals are appropriate, and if not, what can be included to ensure clarity, adequate process and accountability? 8.5 Whether the criteria for determining that a Modification Proposal is spurious are sufficiently clear, objective, and appropriate.	4(3)(4)

	recommendation by majority vote. Timeframe Check If the Subcommittee cannot recommend in time, it must refer the matter to the MGC; failing that, the MGC must make a binding decision or extend the time-limit.		
Approval & Decision	• Final Recommendation to MGC The Final Modification Recommendation and supporting report are submitted to the MGC. • MGC Decision Within 3 months, the MGC must accept, reject, or direct further work and extend the timeline if necessary. • Submission to NERSA If approved by the MGC, the Modification is submitted to NERSA for approval. • NERSA Decision NERSA must decide within 3 months of receipt. Effective Date If approved by NERSA, the Modification becomes effective 2 business days after the decision, unless another date is specified.	8.6 Are the decision options for the MGC together with the associated timelines (i.e. 3 months), sufficiently clear, fair and transparent to ensure that stakeholders are not unduly prejudiced? 8.7 Is the effective date enough and clearly stipulated?	4(3)(8)
Implementation & Publication	• MO Implementation The Market Operator implements the approved changes, including system and process updates. Publication The Market Operator promptly publishes the MGC decision on its website.	8.8 Is there any other form of communicating the decision as additional website publication?	4(3)(9)

15. CONSULTATION QUESTIONS ON THE SAWEM RULES

15.1 MARKET CONDUCT RULES (ATTACHED AS APPENDIX A)

15.1.1 Market Conduct Rules Overview

- These rules form part of the Market Code, guiding conduct of Market Participants to promote fairness, efficiency, and integrity in trading activities, while complying with legal and professional standards.

15.1.2 Key Conduct Principles

- Participants must act genuinely, ensuring all orders reflect real interests and transactions are authentic.
- Market participants are prohibited from improperly influencing prices or disrupting market access.
- Unreasonable or unethical business methods are forbidden; good business practice is mandated.
- Market manipulation is strictly defined, including actions that generate false signals, artificially secure prices, or employ deception, with dissemination of false information also prohibited.
- Information dissemination must be truthful; journalism or artistic expression are exceptions unless used to mislead or gain unfair advantage.
- Attempting market manipulation is an abuse subject to investigation and prosecution.

15.1.3 Inside Information and Insider Trading

- Inside information is precise, non-public data likely to significantly impact prices; its assessment is case-specific.
- Inside information must be published via prescribed services.
- Prohibitions include using inside info for trading, disclosing it improperly, or inducing others to trade based on it.
- Information related to a participant's own plans is excluded from inside information.

15.1.4 Transparency and Disclosure

- Certain capacity outages, limitations, or expansions affecting cross-zonal or intra-zonal capacities, and significant market orders, must be publicly disclosed up to three years ahead.
- Disclosure includes details like affected areas, capacities, event timings, causes, and is required within one hour unless justified otherwise.
- Disclosures are made through accessible systems to ensure timely market transparency.

15.1.5 Investigation and Enforcement

- The Market Support Unit (MSU) initiates investigations upon suspicion of (MGC) and other authorities.
- The MSU recommends sanctions, and the MGC can impose penalties for

non-compliance, with sanctions enforceable and appealable to NERSA.

- The MGC handles suspension decisions and disciplinary actions related to misconduct.

15.2 CENTRAL PURCHASING AGENCY RULES (ATTACHED AS APPENDIX B)

15.2.1 Overview of Rules and Responsibilities

- The Rules form part of the Market Code, guiding the CPA's conduct regarding market participation, contracts, and agreements.
- The CPA maintains a public list of all contracts, including project details, and covers costs via a legacy charge approved annually by NERSA, which is also responsible for approving any revisions.
- The CPA must act to minimize market imbalance, register as a Market Participant and Balance Responsible Party, and comply with the Market Code.

15.2.2 Section 34 Agreements and Market Operations

- The CPA is responsible for bidding all Section 34 agreements into SAWEM and managing their balancing responsibilities.
- It can define Trading Units by combining IPPs to reduce imbalance costs and use forecasts (System Operator or IPP-based) depending on the bid window, with published forecasts and actual production data, including balancing costs.

15.2.3 Vesting Contracts

- All vesting contract templates are publicly available, excluding specific project data, with contract volumes also disclosed.
- For vesting with Eskom Distribution and other licensed distributors, the CPA acts as the financial counterparty, determines wholesale tariffs annually, and manages payments and disputes related to the difference between contracted tariffs and market prices.
- For Eskom Generation, individual contracts exist per station, with the CPA responsible for energy rates, availability payments, ancillary services, and managing all claims and disputes, including sharing calculation details.

15.2.4 International Bilateral Agreements

- The CPA manages legacy international bilateral contracts, including renegotiations and new agreements on a political basis, aggregating import/export contracts, and ensuring power supply through SAWEM.
- It handles claims, queries, and disputes arising from these contracts, with regional and national energy imbalances managed per SAPP and SAWEM rules.

15.2.5 Programme Management

- The CPA supports procurement processes under section 34 of the ERA, managing related agreements and recovery of associated costs through the Wholesale Tariff.

15.3 DISPUTE RESOLUTION PROCESS (ATTACHED AS APPENDIX C)

15.3.1 Overview

- The Dispute Resolution Process provides for the required process to resolve disputes between Parties to the Market Code.

15.3.2 Key features of the process

- A dispute is initiated when the claimant submits a statement of claim to the Dispute Resolution Board (DRB) within 15 (fifteen) business days of referring the dispute. The claim must contain all relevant facts, submissions, and supporting documentation.
- The DRB must provide the respondent with a copy of the claim, after which the respondent has 15 (fifteen) business days to submit its written response and supporting evidence.
- The claimant may request leave to file a reply within 3 (three) business days of receiving the response. If leave is granted, the reply must be submitted within 10 (ten) business days. The DRB may also direct the claimant to provide a reply.
- The DRB may request additional statements, evidence, or information from either party within a reasonable time where necessary.

15.3.3 How disputes are determined

- The DRB may decide the dispute based only on written submissions, without holding a hearing.
- If the DRB considers it necessary, it may instead convene an oral hearing and must notify the parties in writing once a hearing date has been arranged.
- Proceedings are generally conducted without legal representatives, unless the DRB decides otherwise.
- The DRB also has discretion to call upon third parties to participate where relevant to the dispute.

15.3.4 Decision and outcome

- The DRB must issue its decision on the merits of the dispute within 21 (twenty-one) business days after the later of:
 - o receiving all written submissions or requested information or concluding the oral hearing.
- The decision must be provided in writing and must include written reasons.

15.3.5 Complex disputes

- If the DRB determines that the dispute is too complex to be resolved efficiently through this process and would be more appropriately dealt with by a court of law, it must notify the parties as soon as reasonably possible.

15.4 NON-MARKET PARTICIPANT BALANCE RESPONSIBLE PARTIES RULES (ATTACHED AS APPENDIX D)

15.4.1 Introduction and Purpose

- The purpose of these rules is to establish the framework for Balance Responsible Parties (BRPs) that are not Market Participants and to clarify how the Balancing Mechanism applies to such parties.
- The Rule ensures that certain generators, traders, distributors, and power market participants that are not directly active as Market Participants are nevertheless incorporated into the balancing, scheduling, metering, and compliance arrangements of SAWEM.

15.4.2 Who qualifies as a BRP?

A party qualifies as a Balance Responsible Party if it falls into one of the following categories:

a) Generators

- A Generator must be a BRP if it:
 - operates a generating unit/facility of 10 MW or more,
 - is licensed or registered by NERSA, and
 - is connected to the Integrated Power System.

b) Traders

A Trader qualifies if it:

- is licensed,
- is a counterparty to a physical bilateral or direct supply agreement with a qualifying Generator,
- or supplies electricity to a consumer that:
 - does not buy electricity from a licensed Distributor,
 - and is not a Market Participant.

c) Distributors

- A licensed Distributor qualifies if it:
 - does not purchase energy from another Distributor that is itself already a BRP.

d) Power Market Participants

- Any Power Market Participant, including a consumer participating in the Power Market, qualifies as a BRP.

15.4.3 Mandatory registration

Any Generator, Trader, or Distributor that meets the criteria must either:

- register as a BRP with the Market Operator, or
- appoint another willing BRP to act on its behalf.

15.4.4 Main obligations of a BRP

A BRP has several obligations under the Market Code.

a) Comply with the Market Code

Each BRP must:

- comply with relevant Market Code obligations; and
 - consider technical, economic, and operational constraints when submitting information.
- b) Sign a Balancing Agreement**
- Each BRP must conclude a Balancing Agreement with the Market Operator; and
 - This is important because it formally enables the BRP to participate in the balancing and settlement framework.

15.4.5 Conduct and compliance requirements

- Even if a BRP is not a Market Participant, it must still comply with the Market Conduct Rules in the same way as Market Participants.

This means the BRP must ensure that:

- o its organisation behaves appropriately in relation to market activities,
- o anyone involved in Trading on its behalf,
- o including management and decision-makers, must be subject to the same restrictions and obligations needed to ensure compliance.

9. Questions / Comments on SAWEM Rules

9.1 Clarity and applicability of rules

- o Are the proposed rules sufficiently precise in their articulation of purpose, scope, and applicability to all relevant stakeholders, including market participants, signatories to the market code, the Central Purchasing Agency (CPA), and dispute resolution entities?

9.2 Alignment with governance framework

- o Do the proposed rules align with the South African Wholesale Electricity (SAWEM) governance framework and integrate seamlessly with the overarching market code, ensuring a consistent and robust governance structure for the SAWEM?

9.3 Coverage of anti-competitive behaviour

- o To what extent do the market conduct rules comprehensively address all forms of anti-competitive practices and market abuse pertinent to the SAWEM environment? Are there identifiable gaps or vulnerabilities, and how should compliance be monitored and enforced, particularly in delineating the roles of NERSA and the Market Surveillance Unit of the Market Operator?

9.4 Cost recovery mechanisms

- o Is the proposed mechanism for recovering CPA-related costs and reconciling contract-to-market price differences through a legacy charge applied to all consumers economically justified and equitable? What alternative cost recovery measures could be considered to enhance fairness and efficiency?

9.5 Dispute resolution timelines

- o Are the stipulated timelines for the dispute resolution board to issue a decision within 21 business days of receiving complete submissions or concluding hearings operationally feasible and conducive to timely resolution?

9.6 Regional and National Imbalances

- o Does the proposed approach to managing regional imbalances under the Southern African Power Pool (SAPP) rules and national imbalances under SAWEM rules provide sufficient clarity and operational feasibility?

9.7 CPA responsibilities in bilateral agreements

- o Are the responsibilities assigned to the CPA for addressing claims, queries, and disputes arising from international bilateral agreements adequately defined and aligned with SAWEM's governance framework?

9.8 Transparency and confidence in SAWEM operations

- o Do the collective provisions of the proposed rules effectively enhance transparency, accountability, enforceability, and stakeholder confidence in the governance and operation of SAWEM?

9.9 Legacy Cost Recovery

- o How should legacy costs be calculated and recovered in a transparent manner? Are there best practices or methodologies from other electricity markets that could serve as benchmarks for SAWEM?

9.10 Treatment of BRPs in market mechanisms

- o Is the proposed treatment of balance responsible parties (BRPs) in the day-ahead market, intra-day market, and balancing mechanism—including the application of “must-run” status and the use of R0/MWh deemed incremental pricing—appropriate and conducive to market efficiency?

9.11 Definition and Feasibility of Obligations for Non-Market Participant BRPs

- o Are the obligations and rights of Non-Market Participant Balance Responsible Parties (BRPs) clearly articulated within the Market Rules, and do they align with the operational and financial capabilities of these entities?
- o Should Non-Market Participant BRPs be required to meet the same technical and financial requirements as full Market Participants, such as providing day-ahead schedules and posting collateral?
- o If Non-Market Participant BRPs are unable to meet these requirements, should the Market Rules mandate that they contract with existing Market Participants to fulfill these obligations?

9.12 Right of Appeal to NERSA

- o Is the current provision for the right of appeal to NERSA sufficient to ensure fair and transparent resolution of disputes?
- o Should the Market Rules provide further elaboration on the scope, process, and timelines for appeals to NERSA to enhance clarity and procedural efficiency?

10. General Questions

10.1 Market Code Alignment and Modifications

- o Are there any areas where further alignment between the Market Code, existing codes, licenses, or other applicable legislation is required?
- o What improvements can be made to the Market Code modification process to ensure it is more inclusive and efficient?
- o Are there any specific areas of the Market Code that you believe require modification or review? Please provide details.

10.2 Municipalities and Distributors

- o How can the Market Code better address the needs of municipalities and other distributors as major market participants?
- o How can the Market Code better address the issue of unpaid debts, particularly in the context of municipal distributors?
- o What measures can be implemented to ensure municipalities are recognized as core system actors in the SAWEM framework?
- o Are there additional measures that could be introduced to enhance financial accountability and reduce the risk of bad debt accumulation?
- o How can the SAWEM framework be better aligned with the Municipal Finance Management Act (MFMA) and municipal tariff regulation cycles?

10.3 Stakeholder Engagement and Transparency

- o Are there additional safeguards, reporting obligations, or implementation measures that should be included before the rules are finalized?
- o How can NERSA ensure that the SAWEM framework is a “public-interest market” rather than a purely commercial market?
- o Do the Code and Rules provide adequate requirements for the publication of information to ensure transparency and public trust?
- o What additional data or records should be published to improve market visibility and accountability (e.g., emissions data, dispatch orders, CPA contracts)?

10.4 Impact of Reforms and Affordability

- o What additional regulatory interventions are necessary to ensure that SAWEM reforms do not undermine local government finances, service delivery, and electricity affordability?

16. TENTATIVE TIMELINES

16.1 The approval of the Market Code is linked to NERSA's business plan objectives of the Electricity Industry Regulation Programme 5: Setting of rules, guidelines and codes for the regulation of the electricity industry.

16.2 To support these objectives, NERSA will follow the process, which includes public participation as stipulated in Table 2 below.

Table 2: Indicative timelines for the approval of the Market Code

Activities	No of days
ELS Approval of Consultation Paper (Including getting quotes for publishing)	17 April 2026
Publishing for Notice and Comments	28 April 2026
Analysis of Stakeholder comments	5 June 2026
Preparation of ELS submission and RFD	19 June 2026
ELS Approval of the Market Code Submission	26 June 2026
Preparation of ER submission and RFD	3 July 2026
ER Approval the Market Code Submission	31 July 2026

17. CONCLUSION

17.1 The establishment of the South African Wholesale Electricity Market represents a major milestone in electricity sector reform. Stakeholder engagement is critical to ensure that the Market Code:

- i. Promotes competition and Investment;
- ii. Ensures system reliability;
- iii. Maintains transparent and fair market rules; and
- iv. Protects consumer interests.

- 17.2 The Regulator encourages all stakeholders to actively participate in this consultation process. Stakeholders are therefore encouraged to provide comprehensive, evidence-based, and constructive comments to ensure that the Market Code continues to support the safe, secure, and efficient operation of the electricity market.
- 17.3 Furthermore, in making its decision, NERSA must satisfy the provisions of the PAJA. It is based on the above that NERSA requires to undertake a public participation process for the approval of the Market Code, which enables it to appropriately apply its regulatory views and decision-making prior to approval of the Code.
- 17.4 It is based on the above reasoning that NERSA is requesting stakeholders to comment on the Market Code, as set out in this consultation paper. Stakeholder participation will ensure that the Market Code promotes transparency, competition, efficiency, and system reliability in the electricity sector.

The comments should be sent to NERSA for the attention of **Mr Rhulani Mathebula**:

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Postal Address:

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0007

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The deadline for the submission of comments is **29 May 2026**.

- 17.5 Kindly provide the name, address, telephone or mobile number, and email address of the person or organisation submitting the comments. Submissions made after the deadline will not be considered.