

OUTA

ORGANISATION UNDOING TAX ABUSE



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OUTA's comments on the Electricity Regulation Amendment Bill

**Submission to the Minister of Mineral
Resources and Energy**

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1. INTRODUCTION

1.1 By way of introduction, OUTA is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. We envision a prosperous country, with an organised, engaged and empowered civil society that ensures responsible use of tax revenues.

1.2 Part and parcel to OUTA's mission is the challenging of legislation and regulatory environment, this includes participating and engaging with government on the Electricity Regulation Amendment Bill, as published in the Government Gazette on 10 February 2022.

1.3 In the paragraphs below, OUTA will categorically illustrate its concerns, objections, and suggestions.

2. OUTA SUPPORTERS AND THE PUBLIC AT LARGE FACE MAJOR PROBLEMS IN RESPECT OF ELECTRICITY SUPPLY

2.1 OUTA supporters and the public are situated in areas generally served by Eskom Holdings SOC Ltd ("Eskom") or municipal electricity distributors for the supply of electricity.

2.2 In areas served by municipal electricity distributors, OUTA members, supporters and the public experience massive electricity supply disruptions caused by:

2.2.1 Regular and growing occurrences of generation capacity shortfalls by Eskom, resulting from Eskom's exceptionally low and declining energy

availability factor (“EAF”) and unplanned breakdowns of its generation plant, leading to load shedding across South Africa, including by municipal electricity distributors.

2.2.2 Regular and growing occurrences of unplanned power outages caused by distribution system infrastructure equipment failures in municipal electricity distribution networks. These failures result from: aging and poorly maintained substations, mini-substations, transformers, lines, cables, and switchgear; overloading of distribution equipment and circuits due to population growth, illegal connections and electricity theft; vandalism and theft of electricity infrastructure such as copper cables, overhead lines, transformers, steel structures and poles; and general human resource limitations and mismanagement within the municipal environment.

2.2.3 Regular and growing occurrences of power outages caused by “load reduction” imposed by Eskom on municipal electricity distributors that exceed their notified maximum demand from Eskom, and/or are in arrears with Eskom in respect of payments for electricity supply. Eskom is cutting power to many municipal electricity distributors (which is referred to as “load reduction”) during certain hours of the day, as leverage to force municipalities to pay Eskom. This results in regular power outages to the public.

2.3 All of this is proving massively disruptive to the lives and business activities of OUTA supporters and the public in both Eskom and municipal areas of electricity supply, with associated loss of revenue, productivity and jobs, and an inability to

grow and adequately serve South Africa's need for jobs, economic recovery and growth following the COVID-19 pandemic.

3. PUBLIC RESPONSE TO THE CRISIS

3.1. OUTA supporters and the public are responding to the dire situation described above, and the critical need for security of electricity supply, in various ways as follows:

3.1.1. Installation of petrol and diesel standby generators. However, there is a significant upfront capital cost, as well as ongoing operating costs in the form of fuel and maintenance, which add to the cost of the unreliable Eskom or municipal electricity supply. These costs are simply to continue the status quo with some a degree of normalcy, and as such, these are non-value adding investments with significant ongoing operating and maintenance costs. Petrol and diesel standby generators also increase levels of air and noise pollution.

3.1.2. Installation of uninterruptable power supplies for critical equipment, such as computers, networks, and ICT systems. Again, this represents a significant capital cost simply to continue the status quo with a degree of normalcy, and as such this is non-value adding.

3.1.3. Installation of battery banks, battery chargers and inverters for various critical building and property services, general office equipment, lighting and other loads. Again, this represents a significant capital cost simply to

continue the status quo with a degree of normalcy, and as such this is non-value adding.

3.1.4. Installation of grid-tied solar PV systems. Again, this represents a significant capital cost, but it does help reduce grid electricity consumption and peak demand, and thus reduces the monthly electricity bill from Eskom or the municipal electricity distributor. It also reduces overloading of the Eskom or the municipal distribution networks. But it does not provide any security of supply when the grid supply is not present.

3.1.5. Installation of combined grid-tied solar PV systems with battery energy storage. This represents an even greater capital cost, but it does reduce grid electricity consumption and peak demand, and thus reduces the monthly electricity bill from Eskom or the municipal electricity distributor. It also reduces overloading of the Eskom or the municipal distribution network. It also provided security of supply as back-up electricity is provided when the grid supply is not present.

3.2. OUTA thus believes that there is much that can, should and is being done by its supporters and the public themselves to alleviate the dire situation, to provide solutions to these challenges, and to take ownership of their own energy futures.

3.3. However, there is also much that can and should be done by the Department of Mineral Resources and Energy (“DMRE”), the National Electricity Regulator of South Africa (“NERSA”), Eskom and municipal electricity distributors in the area of electricity policy, legal, regulatory, planning and structural reform that would

make a very significant difference to load shedding and power interruptions in South Africa in the short-term and medium term.

3.4. Already, many OUTA supporters and the public have invested significantly in standby petrol and diesel generator sets and other back-up systems detailed above to provide a measure of continuity of supply during load shedding by Eskom, and other power outages caused by Eskom and municipal electricity distributors.

3.5. However, OUTA believes that there is still a lot more that its supporters and the public can do to help alleviate Eskom's inability to meet demand, as well as to relieve the burden on Eskom and municipal electricity distribution systems, and to contribute to security of supply and a reduction of South Africa's carbon emissions.

3.6. OUTA supporters and the public are ready and willing to make further investments in this regard. OUTA therefore urges the DMRE to unlock this potential and allow the public to become part of the electricity supply solutions in South Africa, by updating and modernising restrictive policy, legislation and regulations which serve to inhibit such investments and activities.

4. OUTA BROADLY SUPPORTS THE INTENT OF THE DRAFT ELECTRICITY REGULATION AMENDMENT BILL

4.1. The amendment of Schedule 2 of the Electricity Regulation Act in 2021 to lift the limit above which a generation licence is required from 1 MW to 100 MW, was necessary to reduce the regulatory burden on larger commercial, industrial and mining customers of electricity wanting to do self-generation.

- 4.2. However, OUTA believes that the amendment of Schedule 2 as detailed above was not sufficient to unlock the significant potential of embedded, distributed, and self-generation, wheeling and trading of electricity across Eskom and municipal networks.
- 4.3. OUTA therefore broadly supports the intent of the draft Electricity Regulation Amendment Bill to align with the intended restructuring and unbundling of Eskom, and to facilitate the liberalisation of the electricity supply industry to enable embedded, distributed and self-generation, wheeling and trading of electricity by domestic, commercial, industrial, mining, agricultural and transportation customers of electricity.
- 4.4. This is considered necessary for OUTA supporters and the public in order to:
- 4.4.1. Reduce dependence on Eskom and municipal electricity distributors, and so relieve them of a burden they are clearly unable to meet, to lower the probability of loadshedding and power outages and to an increase security of supply.
 - 4.4.2. Reduce electrical energy and demand costs and ensure a more predictable and lower electricity price trajectory in the years ahead, through the installation of solar PV and battery energy storage systems by OUTA supporters and the public.
 - 4.4.3. Reduce consumption of coal-fired electricity from Eskom in order to lower the carbon footprint of OUTA supporters and the public in efforts to lower

emissions and mitigate climate change from the burning of fossil fuels such as coal.

4.5. Insofar as the draft Electricity Regulation Amendment Bill enables the above by putting in place the necessary legal, regulatory, planning and pricing frameworks, structures, rules and procedures to facilitate these new government policies, OUTA is supportive of the proposed amendments.

5. BROAD OVERVIEW OF THE DRAFT ELECTRICITY REGULATION AMENDMENT BILL AS PERCEIVED BY OUTA

5.1. The draft Electricity Regulation Amendment Bill is considered by OUTA to be an extremely important proposed expansion and amendment to the current Electricity Regulation Act, in order to:

5.1.1. Put in place the necessary legal, regulatory, and planning framework, rules and procedures to implement new government policy for the electricity supply industry.

5.1.2. Allow for the liberalisation of the electricity supply industry in South Africa, away from a monopoly vertically integrated electricity utility (Eskom) and geographic monopolies for electricity distribution (municipalities).

5.1.3. Cater for the restructuring and unbundling of Eskom into separate generation, transmission, and distribution entities.

- 5.1.4. Allow for and regulate a diversified, competitive generation sector comprising Eskom generators, other public sector generators, public private partnership (“PPP”) generators, municipal generators, independent power producers (“IPPs”), self-generation and distributed, embedded generation within distribution networks.
- 5.1.5. Allow for and regulate the establishment of an independent Transmission System Operator (“TSO”), and to define its roles and responsibilities.
- 5.1.6. Allow for and regulate the establishment of a National Control Centre (“NCC”) within the TSO.
- 5.1.7. Allow for and regulate the establishment of a Central Purchasing Agency (“CPA”) within the TSO, and to define its role and responsibilities.
- 5.1.8. Allow for and regulate the establishment of electricity day-ahead, balancing, capacity, and ancillary services markets in South Africa.
- 5.1.9. Allow for and regulate wheeling of electricity across the grid between electricity generators and users.
- 5.1.10. Allow for and regulate wholesale or retail buying of electricity by traders for resale to users (i.e., trading of electricity as a commercial activity).
- 5.1.11. Allow for and regulate the import and export of electricity in South Africa.

- 5.1.12. Defining of licenced electricity activities and those activities exempted from licencing in South Africa.
- 5.1.13. Provide for licensing and registration of electricity generators, transmitters, distributors, and traders of electricity in South Africa, and define the rules for licensing and the exemptions from licencing
- 5.1.14. Define the roles, responsibilities, and powers of the DMRE Minister, NERSA, the TSO the Central Purchasing Office (“CPO”), the NCC and the Market Operator(s).
- 5.1.15. Define the planning framework, roles and responsibilities for generation and transmission system planning in South Africa i.e., for the Integrated Resource Plan for Electricity (“IRP”) and the National Transmission Plan (“NTP”).
- 5.1.16. Define the generation and transmission procurement framework, roles, and responsibilities in South Africa, including public and private sector procurement processes.
- 5.1.17. Define and regulate the setting of tariffs by generators, transmitters, distributors, traders, importers, and exporters of electricity in South Africa.

6. OBJECTIVES OF OUTA THROUGH SUITABLE AMENDMENT OF THE ELECTRICITY REGULATION ACT

6.1. The Electricity Regulation Amendment Bill is needed by OUTA supporters and the public in order to:

6.1.1. Facilitate grid connected self-generation facilities in order to reduce electrical energy and demand costs on electricity supplied by Eskom or municipal distributors in a secure and enabling legal and regulatory framework.

6.1.2. Facilitate wheeling of green power from IPPs to multiple sites in different geographic areas in a secure and enabling legal and regulatory framework.

6.1.3. Reduce the Scope 1 (in house) carbon footprint of OUTA supporters and the public by minimising the use of diesel standby generators in a secure and enabling legal and regulatory framework.

6.1.4. Reduce the Scope 2 (off site) carbon footprint of OUTA supporters and the public by minimising the use of coal- and diesel-fired Eskom/municipal power in a secure and enabling legal and regulatory framework.

6.1.5. Increase security of supply and productivity and reduce load shedding experienced by OUTA supporters and the public by facilitating significant increase in self-generation, embedded generation and distributed

generation by all domestic, commercial, industrial, mining, agricultural and transportation customers, thus reducing the burden on Eskom generators – a burden that Eskom currently is quite regularly not able to meet.

- 6.1.6. Facilitate a diverse and competitive generation sector through the establishment of the enabling legal and regulatory framework for an independent TSO, NCC and CPA that ensures non-discriminatory, unconflicted grid access on level playing field by new generation entrants. This ensures improved performance and cost efficiency in electricity supply that benefits OUTA supporters and the public.
- 6.1.7. Facilitate the legal and regulatory framework for a competitive day-ahead electrical energy and capacity market, balancing market and auxiliary services market that ensures improved cost efficiency in electricity supply that benefits all domestic, commercial, industrial, mining, agricultural and transportation customers of electricity.
- 6.1.8. Facilitate legal and regulatory framework for the trading of energy as a commercial activity, by separation of the “wires” business from the “energy” business, allowing aggregators, traders to buy energy in bulk from generators, or from the electricity market, and trade the energy in innovative packages tailored for different customer segments in diverse geographic areas. This eliminates abuse of market dominance by Eskom and municipal supply monopolies and improves cost efficiencies in electricity supply that benefits OUTA supporters and the public.

6.1.9. Facilitate a rational electricity pricing and planning framework for electricity tariffs, regular updates to the IRP and NTP. This provides better power system planning and reliability of supply at lower cost to OUTA supporters and the public.

6.1.10. Establish the legal and regulatory framework necessary for the liberalisation of the whole electricity supply and electricity distribution industry, away from the current vertically integrated Eskom monopoly structure, and the geographic monopoly structures of failing municipal electricity distributors. This brings competition, choice of supplier, improved operational and cost efficiencies and reliability of supply to OUTA supporters and the public.

7. OUTA'S COMMENTARY ON THE DRAFT ELECTRICITY REGULATION AMENDMENT BILL

7.1. While OUTA supports the broad intent of the proposed draft Electricity Regulation Amendment Bill, OUTA makes the following specific comments in response to the call for input from affected stakeholders.

7.2. OUTA does not intend to comment point-by-point to each of the proposed additions, deletions and/or amendments in the draft Bill in a legalistic way. Instead, OUTA intends to respond broadly to the policy, regulatory, planning and pricing principles espoused in the draft Electricity Regulation Amendment Bill.

7.3. OUTA is aware that other business associations, and in particular Business Unity South Africa ("BUSASA"), has employed the services of competent legal advisors to

review the legal implications of each of the proposed additions, deletions and/or amendments in the draft Electricity Regulation Amendment Bill.

- 7.4. Some specific, yet broad comments of principle by OUTA to the draft Amendment to the Electricity Regulation Act are illustrated below:

Structure of the Draft Electricity Regulation Amendment Bill presented for comment

7.4.1. OUTA contends that the draft Electricity Regulation Amendment Bill documents gazetted for comment has been poorly put together and presented for public comment.

7.4.2. The document presented requires the reader to read and cross reference the many proposed additions, deletions, and amendments with the separate current Electricity Regulation Act document, to digest and understand the changes, and the implications thereof.

7.4.3. This requirement to have to read the draft additions, deletions, and changes of the draft Amendment in conjunction with the separate current Electricity Regulation Act, coupled with a number of section and paragraph numbering errors, make such cross referencing extremely difficult, if not impossible, except for the most determined and legally minded of persons in understanding and commenting on the draft and its full implications.

- 7.4.4. This defeats the very purpose of making the draft Electricity Regulation Amendment Bill available for public input and comment by OUTA supporters and the public.
- 7.4.5. It would have been better if the draft amendments had been incorporated within the current Electricity Regulation Act as tracked changes. This would enable the draft Electricity Regulation Amendment Bill and changes to be properly read, digested, and understood in the full context of the current Act.
- 7.4.6. It is strongly recommended that a combined document (i.e., the current Electricity Regulation Act plus the proposed additions, deletions, and changes thereto) be published again as a single document with “tracked changes” for review and comment before the amended Electricity Regulation Act is finalised and promulgated through the parliamentary process.

OUTA supports increased policy, regulatory, planning and pricing certainty

- 7.4.7. As a matter of principle, OUTA supports efforts by government to increase electricity policy, regulatory, planning and pricing certainty.
- 7.4.8. OUTA believes that the draft Amendments to the Electricity Regulation Act go a long way to clarify the intentions of government in respect of the unbundling and restructuring of Eskom, the creation of an independent TSO, the establishment of a diversified competitive generation sector, day-ahead electricity, balancing, capacity and ancillary services markets,

embedded, distributed and self-generation, co-generation, wheeling and trading.

7.4.9. As such OUTA broadly supports the draft Amendments to the Electricity Regulation Act in respect of the clarity that this brings.

7.4.10. OUTA believes that every effort needs to be taken to avoid aspects of the draft Amendment to the Electricity Regulation Act that are unclear and open to different interpretations, as any such uncertainty will delay and inhibit the intentions of the draft Amendment, the restructuring of the Electricity Supply Industry, and the uptake of embedded, distributed, and self-generation, wheeling and trading in South Africa.

7.4.11. Such uncertainty would then further impede security of supply, jobs, investment, and economic growth.

OUTA supports reducing unnecessary red tape

7.4.12. As a matter of principle, OUTA believes that the discretionary powers of the Minister and of the NERSA should be limited to the maximum extent possible, because such discretionary powers create policy, regulatory, planning and pricing uncertainty, which further impedes security of supply, jobs, investment and economic growth.

7.4.13. OUTA believes and recommends that further work is required to review and to limit the wide discretionary powers of the Minister and NERSA that

are embodied in the proposed draft Electricity Regulation Amendment Bill.

OUTA supports the wheeling of power across both Eskom and municipal networks

7.4.14. OUTA supports opening-up of distribution and transmission networks to the wheeling of power from distributed generators to off-takers, in one-to-one, one-to-many, many-to-one and many-to-many wheeling configurations, between both related and unrelated parties.

7.4.15. OUTA therefore recommends that all clauses in the draft Electricity Regulation Amendment Bill that serve to unnecessarily prevent, restrict, limit, inhibit or discourage wheeling of power across Eskom and municipal networks to small, medium and large companies, end-customers and OUTA supporters and the public, be removed or amended.

7.4.16. OUTA believes the removal of unnecessary bureaucratic red tape for wheeling will facilitate the uptake of embedded, distributed, and self-generation, relieve Eskom of a demand that it is unable to meet, and reduce load shedding by Eskom.

7.4.17. OUTA further supports the establishment by NERSA of a national wheeling tariff framework that enables Eskom, municipal and other network operators to develop cost-reflective wheeling tariffs that are fair and equitable to generators, network operators, customers of electricity and OUTA supporters and the public.

OUTA supports the trading of electricity

7.4.18. OUTA supports opening-up of trading of electricity by new entrants into the Electricity Supply Industry for this purpose, to facilitate a competitive, diversified, retail electricity sector to small and medium-size companies, end-customers and OUTA supporters and the public.

7.4.19. Electricity trading requires a separation of the network (or “wires”) services provided by Eskom and municipal electricity distributors from retail electricity (energy) sales. Electrical energy can then be procured in bulk by aggregators and retail electricity traders from Eskom, municipal electricity distributors and/or IPPs, and sold in innovative arrangements “bundled” with other retail services to meet the needs of specific end-user market segments, including OUTA supporters and the public.

7.4.20. Eskom and municipal electricity distributors can of course continue to provide retail electricity sales as they presently do, but OUTA believes there is no reason to prevent aggregators and retail electricity traders to provide retail electricity sales as well, for the benefit of end-customers, including OUTA supporters and the public, who would then have enhanced choice to suit their particular needs.

7.4.21. OUTA therefor recommends that all clauses in the draft Electricity Regulation Amendment Bill that serve to unnecessarily prevent, restrict, limit, inhibit or discourage retail electricity trading to small and medium-size companies, end-customers and OUTA supporters and the public, be removed or amended.

OUTA supports the restructuring and unbundling of Eskom

7.4.22. OUTA supports the restructuring and unbundling of Eskom, initially to ringfence its Generation, Transmission and Distribution business activities into separate ring-fenced operating divisions.

7.4.23. Thereafter, OUTA supports the separation of Eskom's Transmission division into a separate subsidiary legal entity / operating company, to perform the functions – for a period of up to five years – of the TSO as detailed in the draft Electricity Regulation Amendment Bill.

7.4.24. OUTA also supports the further separation of Eskom's Generation and Distribution divisions into separate Generation and Distribution subsidiary legal entities / operating companies, as detailed in the Department of Public Enterprises' Eskom Roadmap of October 2019.

OUTA supports the establishment of an independent Transmission System Operator

7.4.25. Thereafter, following a period of up to five years, OUTA supports the separation of Eskom's Transmission subsidiary company into a separate legal entity / operating company that is independent of Eskom, to become the independent TSO as detailed in the draft Electricity Regulation Amendment Bill.

- 7.4.26. OUTA supports the above in order to facilitate a diverse and competitive generation sector that is enabled by the independent TSO together with the NCC and CPA within the independent TSO.
- 7.4.27. OUTA supports non-discriminatory, unconflicted grid access on level playing field by new generation entrants, municipal generators, embedded, distributed and self-generation, together with improved generation capacity and grid planning facilitated by the independent TSO.
- 7.4.28. OUTA believes this will improve electricity supply industry performance, cost efficiency and security of electricity supply, which will benefit South Africa, all its people, OUTA supporters and the public, and the economy in general.

OUTA supports the establishment of a multi-market structure for the Electricity Supply Industry

- 7.4.29. OUTA supports the establishment of competitive electricity day-ahead, balancing, capacity, and auxiliary services markets, as detailed in the draft Electricity Regulation Amendment Bill
- .
- 7.4.30. OUTA believes these will provide improved cost efficiencies in electricity supply that will benefit all domestic, commercial, industrial, mining, agricultural and transportation customers of electricity in general, including OUTA supporters and the public.

OUTA supports the restructuring and rationalization of the Electricity Distribution Industry

7.4.31. While not covered in this draft Electricity Regulation Amendment Bill, OUTA would like to voice its support for the urgent need for the restructuring and rationalization of the Electricity Distribution Industry, which is seen by OUTA as deeply problematic.

7.4.32. This is evidenced by regular and growing occurrences of unplanned power outages caused by:

7.4.32.1. Failures of distribution system infrastructure and equipment in municipal and Eskom electricity distribution networks.

7.4.32.2. Aging and poorly maintained substations, mini-substations, transformers, lines, cables, and switchgear

7.4.32.3. High and growing levels of electricity theft and non-payment.

7.4.32.4. Overloading of distribution equipment and circuits due to population growth, illegal connections and electricity theft.

7.4.32.5. Vandalism and theft of electricity infrastructure such as copper cables, overhead lines, transformers, steel structures and poles.

7.4.32.6. General human resource limitations, skill deficits, maladministration, mismanagement and corruption within the municipal and Eskom Distribution environment.

7.4.32.7. Regular and growing occurrences of power outages caused by “load reduction” imposed by Eskom on municipal electricity distributors, and directly by Eskom on other electricity customers.

7.4.32.8. High and growing levels of municipal arrear debt to Eskom in respect of payments for electricity supply.

7.4.33. It appears quite clear to OUTA that the current structure of the Electricity Distribution Industry is unsustainable and poses a significant threat to all customers of electricity – domestic, commercial, industrial, mining, agricultural and transportation, including OUTA supporters and the public. Indeed, this also poses a threat to economic growth, jobs, and the wellbeing of all South Africans.

7.4.34. In the light of this, OUTA strongly opposes current efforts by the South African Local Government Association (“SALGA”) to ensure that municipalities gain exclusive executive authority over all electricity distribution and reticulation, wall-to-wall across South Africa, including in areas currently supplied by Eskom and other licensed electricity distributors.

OUTA does not support the licensing of generation and transmission construction activities by NERSA

7.4.35. OUTA does not support and indeed strongly opposes the addition of a new regulated activity by NERSA included in the draft Electricity Regulation Amendment Bill, namely the licensing of generation and transmission construction activities by NERSA.

7.4.36. NERSA currently only licenses the operation of transmission facilities, and generation facilities above 100 MW. NERSA has never regulated the

construction of generation and transmission facilities or the licensing of such construction activities.

7.4.37. As indicated previously, OUTA supports the streamlining and removal of unnecessary red tape and unnecessary bureaucracy that holds back customers of electricity, the private sector and OUTA, supporters and the public from engaging in embedded, distributed, and self-generation, wheeling and trading of electricity, and from securing of their own energy futures.

7.4.38. OUTA believes that this proposed new regulated activity by NERSA included now in the draft Electricity Regulation Amendment Bill, which has never been included before, is completely unnecessary, counter-productive and in contradiction with the principle of reducing unnecessary red-tape and unnecessarily restrictive / prescriptive policy, regulatory and planning requirements.

OUTA supports specific attention to energy storage in the Amendment to the Electricity Regulation Act

7.4.39. Despite the increasing role of energy storage in distributed, embedded and self-generation installations, the draft Electricity Regulation Amendment Bill is not clear or specific regarding the treatment of energy storage. In fact, no mention is made of energy storage at all. It is therefore unclear as to how energy storage is to be treated in the draft Electricity Regulation Amendment Bill

7.4.40. One interpretation may be that energy storage is considered as an embedded generator in the Electricity Regulation Act. Another interpretation is that energy storage is treated separately, or not covered at all, as it is an energy storage system and not a generator. In OUTA's view, neither of the above interpretations is entirely adequate.

7.4.41. OUTA believes that energy storage should not be considered as a generation source in the Electricity Regulation Act and IRP. Energy storage fulfils multiple functions in a power system. It can act as load during low demand and a source of stored energy during high demand. It can provide ancillary services such as voltage and frequency support with extremely fast response times. Furthermore, energy storage cannot generate net energy itself – it needs to be charged from an energy source before it can release energy as and when required and is indeed a net consumer of electricity.

7.4.42. OUTA therefore suggests and recommends that there should be specific new category for energy storage in the Electricity Regulation Act. This would provide clarity for this fast-emerging technology and would allow energy storage to play a significant role within transmission and distribution networks, in hybrid and solar power plants, and “behind the meter” within customers' premises and installations, including those of OUTA supporters and the public.

OUTA supports simplification of the NERSA registration processes for embedded generation

7.4.43. Currently, Schedule 2 of the Electricity Regulation Act requires that for grid-connected embedded, distributed and self-generation installations:

7.4.43.1. Below 100 kW: Registration with NERSA is not required; Grid Code compliance is required; and a generation license from NERSA is not required.

7.4.43.2. Between 100 kW and 100 MW: Registration with NERSA is required; Grid Code compliance is required; and a generation license from NERSA is not required.

7.4.43.3. Above 100 MW: Grid Code compliance is required; and a generation license from NERSA is required.

7.4.44. The current NERSA registration process requires NERSA board approval for registration on a case-by-case basis in a quasi-licensing process that is very similar to the full licensing process, as opposed to a simple a registration process to keep track of the installed capacity of such systems in South Africa. This quasi-licensing process is considered by OUTA to be an unnecessary and non-value adding impediment.

7.4.45. This is because, all such generation installations are required to comply with the Grid Code anyway. In addition, all such generation installations are also required to have permission to connect to the grid from Eskom or the relevant municipal electricity distributor, who are themselves responsible to ensure that Grid Code compliance is achieved and maintained for the generation installation that is connecting to the grid.

- 7.4.46. This then obviates the necessity of the current NERSA board approval and quasi-licensing / registration process that is applied by NERSA for the approval and registration of grid-connected embedded, distributed and self-generation installations.
- 7.4.47. This provides an opportunity to greatly simplify and streamline the current quasi-licensing NERSA registration process, in order to speed up the process and avoid a duplicate approval process after Eskom or the relevant municipal electricity distributor has already certified compliance of the generation installation with the Grid Code and approved the proposed installation for connection to the grid.
- 7.4.48. If the monitoring of the installed capacity of grid-connected embedded, distributed and self-generation, installations is required by NERSA and the TSO for planning purposes, then there other more appropriate and far more accurate options available than the current, manual, NERSA quasi-licensing / registration process, which is simply bypassed by many.
- 7.4.49. These include the use of smart satellite monitoring applications, and/or working with relevant solar and wind energy industry associations who themselves could track such installations far more efficiently and effectively.

OUTA supports a simplification of NERSA licensing processes for embedded generation

7.4.50. Currently, Schedule 2 of the Electricity Regulation Act requires licensing of grid-connected embedded, distributed and self-generation installations above 100 MW.

7.4.51. However, it would appear that the licensing requirements of a grid-connected embedded, distributed or self-generation installation above 100 MW, say 101 MW, will then be subject to the same arduous licensing requirements applicable to, say, a 3600 MW Eskom power station.

7.4.52. OUTA believes and recommends that there should be a significantly simplified and streamlined licensing regime for grid-connected self-generation, embedded generation and distributed generation installations with capacities above the 100 MW licensing threshold.

7.4.53. For example, there appears to be some duplication of regulatory licensing efforts through requirements to hold multiple public participation processes, firstly to obtain environmental approval, and then again also to obtain generation license approval.

7.4.54. Certainly, OUTA believes that an arduous licensing regime, perfectly appropriate for a large utility-scale power station, would be quite inappropriate for a grid-connected embedded, distributed and self-generation installation above 100 MW.

7.4.55. This most particularly as full upfront compliance of the installation with the grid-code is required, certified and approved by Eskom or the municipal electricity distributor anyway. In these cases, OUTA believes that an additional generation licensing regime for embedded, distributed and self-generation installations above 100 MW is both unnecessary and inappropriate.

OUTA supports clarity and consistency of definitions and terminology

7.4.56. OUTA believes that there is room for improvement in the definitions of the terminology used in the Electricity Regulation Act and the schedules and regulations thereto. This is also important in order to ensure consistency with the definitions and terminology used in various other legislation and regulations relating to the Electricity Supply Industry.

7.4.57. In the past, significant uncertainty and confusion has been created by inconsistent and incorrect use of terminology in public announcements, documents and presentations by the Minister, various government officials, electricity suppliers, customers, technology providers and users within the Electricity Supply Industry.

7.4.58. OUTA is aware that other business associations, and in particular BUSA has employed the services of competent legal advisors to review the definitions and terminology in the draft Electricity Regulation Amendment Bill, as well as the current Electricity Regulation Act.

OUTA calls for more concise public participation principles and time frames

7.4.59. OUTA believes that public participation ought to form part in integral part of NERSA's decision-making process as such decisions constitute administrative decisions as contemplated in the Promotion of Administrative Justice Act, 2000 ("PAJA"). The draft Electricity Regulation Amendment Bill failed to prescribe set time frames to be followed upon the commencement of any public participation process.

7.4.60. OUTA submits that NERSA's discretion in setting its own timelines and procedural operations ought to be specifically legislated and not left for NERSA to decide (on its own accord) whether such processes are reasonable and procedurally fair. The public's involvement in any decision-making process of NERSA must be stated and must precede (expressly) any subsequent decision taken.

7.4.61. The lack of concise public participation principles in its current form has the potential to delay finality of any decision or administrative process, resulting in any affected person to seek recourse through means of PAJA.

7.4.62. OUTA reiterates that any decision made by NERSA will always (directly or indirectly) affect the public in one way or another, therefore, concise principles and guidelines on public participation is crucial the ensure the independence, transparency and integrity of any decision-making process.

8. CONCLUSION

8.1. We hope our comments and response will be favourably considered and taken into account in the final revised version of the draft Electricity Regulation Amendment Bill. We are grateful to be part of the public participation process relating to legislation that has such a direct impact on South Africa.