



Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo leNtshona Koloni

MINUTES OF PROCEEDINGS

**STANDING COMMITTEE ON FINANCE, ECONOMIC OPPORTUNITIES AND TOURISM
AND STANDING COMMITTEE ON INFRASTRUCTURE**

Monday, 13 May 2024 (09:30), Virtual Meeting via MS Teams

ATTENDANCE

Members:

Democratic Alliance

Maseko, M (Chairperson)

Murray, C (Chairperson)

Sileku, I

Van der Westhuizen, A

African National Congress

Mvimbi, L (Alternate)

GOOD

Little, S

Apology

Nkondlo, N (ANC)

Absent

Brinkhuis, K (Al Jama-ah)

Marran, P (ANC)

The following persons were in attendance:

Western Cape Provincial Parliament

Ms Z Adams, Procedural Officer

Ms S Jones, Procedural Officer

Ms L Cloete, Senior Procedural Officer

Ms M Mrubata, Committee Assistant

Ms M Khoele, Legal Adviser

1. Welcome and attendance

The Chairpersons opened the meeting and welcomed the Members and members of the public who were in attendance.

Member Maseko explained the context of the meeting to the Members of the Standing Committee on Finance, Economic Opportunities and Tourism, and the Standing Committee on Infrastructure.

Member Maseko informed the Committees that the Electricity Regulation Amendment Bill [B 23B - 2024] (NCOP) (the Bill) was referred to both Committees on 15 April 2024. The Chairpersons were then informed that the negotiating mandate was due by 2 May 2024. This left the Committees with two weeks to inform the public, request submissions, and submit a negotiating mandate to the National Council of Provinces (NCOP). The Chairpersons, through the Office of the Speaker, requested that the NCOP provide the provinces with an extension to process the Bill, or to revive the Bill in the new parliamentary term. This request was made on 15 April 2024. The Office of the Speaker followed up on this correspondence; however, in the absence of a response, with the due date for the negotiating mandate looming, the Office of the Speaker was requested to correspond with the NCOP once again, withdrawing the request for an extension and reiterating the Committees request to revive this Bill in the new parliamentary term. The Speaker only received a response from the NCOP on 3 May 2024, after the NCOP had finalised its deliberations on the provinces' negotiating mandates, indicating that the extension could not be granted because the last sitting of the NCOP House was on 16 May 2024. The NCOP did not respond to the Committees' request to withdraw the Bill and revive it in the new term. The Chairpersons then then sought legal advice on whether the Committees were still able to sit on the final mandate where their views could be submitted to the NCOP, hence, a meeting was called to deliberate on the final mandate for the Bill.

2. Deliberations on the final mandate for the Electricity Regulation Amendment Bill [B 23B - 2023], and the consideration and adoption of the final mandate for the Bill

The Chairperson indicated that the Members could express their views on the final mandate for the Bill.

Member van der Westhuizen indicated that it was important that the members of the public were given enough time to comment on the Bill, and that it was clear that the guidelines for public participation were not followed by the NCOP. The timelines given by the NCOP were too short for adequate public participation on this Bill. The Legislature has pleaded with the NCOP in the past not to rush legislation. It seemed that the NCOP was pushing through many pieces of legislation very late in the current parliamentary term. It also seemed that the NCOP has been reduced to a rubber stamp of the National Assembly's decisions, and they were unable to properly consider any inputs made by the provinces. Therefore, it was proposed that the Committees should not support the Bill.

Member van der Westhuizen further proposed that the Committees should express their concerns with the NCOP's legislative process in a separate letter that would be attached to the final mandate.

The Committee agreed to this proposal.

Member Little agreed with Member van der Westhuizen, indicating that it would be irresponsible for the Committees to support a Bill with such a questionable process.

Member Sileku agreed with the previous speakers, reiterating that the Committees should express its disappointment with the way the Committees were treated by the NCOP in respect of their requests. It was important that the incoming Members of the Seventh Parliament corrected the mistakes made by the NCOP in terms of law-making in the Sixth Parliament. The NCOP has already been taken to task about public participation in law-making, but they seem to make the same mistakes, expecting different results.

Member Murray noted that the Committee seemed to be on the same page in respect of their final mandate. The Committees would confer on the Western Cape's delegation in the NCOP the authority not to support the Bill.

Member Mvimbi, standing in for Member Nkondlo, noted that the African National Congress wanted to express its minority view in terms of Standing Rule 90, to support the Bill.

Member Murray indicated that the minority view would be included in the final mandate.

Member Little requested that the following comments on the Bill be included in the minutes of the meeting:

Clause/Subject	Details	Additional GOOD Comments/Recommendations
General	A central theme of these amendments is a move away from a predominantly single-buyer electricity market to a competitive multi-market structure. The proposed amendments in the Bill will promote a competitive market for electricity generation and the establishment of an independent state-owned transmission entity.	
Competitive Multi-Market	The Bill provides for a competitive multi-market structure for the South African electricity industry. The competitive multi-market	

	structure would consist of: (i) market transactions; (ii) physical bilateral transactions; and (iii) regulated transactions.	
Transmission System Operator	<p>The Bill proposes the establishment of the transmission system operator (TSO), which will manage the competitive multi-market. It will be responsible for transmission planning and operation and control of the transmission system and market.</p> <p>The TSO will be charged with developing a transmission expansion plan in accordance with anticipated electricity demand, in line with the integrated resource plan (IRP).</p>	
Central Purchasing Agency	<p>The Bill envisions the formation of a Central Purchasing Agency within the TSO.</p> <p>This agency will buy legacy power purchase contracts, and may purchase additional capacity and energy as required to maintain system integrity in a competitive environment.</p> <p>The Central Purchasing Agency will also fulfill the role of the "Single Buyer". The Bill does not define the "Single Buyer" and it is not clear what this term would mean in the context of a competitive multi-market.</p>	We recommend that further clarity be provided on the agency's roles and reporting structures.
Day-ahead Market	<p>The Bill proposes the introduction of the "day-ahead market", which will match the supply of electrical energy with the expected demand in each hour of the trading day.</p>	<p>It is unclear how the day-ahead market will be housed, set up or operated. Should the board of the TSO, the Central Purchasing Authority, the Regulator or the Minister determine this through rules? We recommend further consideration and provision of the definition and determination of the day-ahead market.</p> <p>There are a number of undefined terms in the</p>

		relevant provisions of the Bill regarding the TSO and the competitive multi-market, making these provisions difficult to evaluate fully.
Ministerial Powers	<p>The Bill continues to grant far-reaching discretion to the Minister.</p> <ol style="list-style-type: none"> 1. the power to issue determinations designating the buyer of electricity, the type of technology and the structure of the project, 2. the power to issue a revised Integrated Resources Plan every three years the power to determine that new electricity infrastructure is needed to ensure optimal supply of electricity; 3. the power to order the TSO to adhere to a transmission development plan or specific aspects of the plan, the power to deviate from the <p><i>(continues below... 3.1 to 3.3)</i></p>	
<i>(follows from Ministerial Power...)</i> 3.1 Arbitration	Section 30 empowers NERSA not only to mediate, but to also provide binding decisions in disputes among licensees and between licensees and customers or end-users through arbitration.	
3.2 Tariff Methodology	Section 14(d) empowers NERSA to set or approve tariffs charged by licensees, but the Bill has removed NERSA's obligation in Section 14(e) to include the methodology to be used to determine rates and tariffs in the license conditions.	<p>We recommend reinstating this provision because the methodology used to determine the rates and tariffs must still be visible but should not apply to private offtake deals or national or municipal offtake deals where tariffs have been bid under a procurement process.</p> <p>The setting of tariff levels may also curtail competition in the market.</p>

3.3 Penalties	Section 14(y) of the Bill empowers NERSA to impose penalties on generation facilities for own use or for supply to customers under direct supply agreements if the facilities do not become operational within the requisite period.	The imposition of such penalties on own generation facilities but not other types of facilities appears to be arbitrary and the justification for this amendment is not immediately clear. Upper limits on the amounts of the possible penalties are also not specified.
3.4 Licensing	Section 4(a)(i) of the Bill introduces seven activities for which NERSA can issue licenses. NERSA is required to license according to the determination made by the Minister in line with the IRP.	
Section 26: Expropriation	The current draft only caters for expropriation by a transmitter for purposes of constructing transmission lines and not for the construction of other ancillary infrastructure, such as substations, which need to be constructed to enable additional generation facilities to connect to the national grid.	We recommend expanding this section to cater for the construction of substations and other ancillary transmission infrastructure that may be required by the transmitter.
IRP	The Bill proposes that the Minister be obliged to issue a revised IRP every three years. This obligation is to be applauded because IRP revisions have been too infrequent and have created a policy environment detached from South Africa's real-time electricity requirements.	The Minister's power to issue a revised Integrated Resources Plan every three years detracts from the TSO's ability to procure electricity supply as needed when imbalances or shortfalls occur during that period. It is also not clear whether new utility-scale generation capacity can be licensed by NERSA and constructed when it is not included in a ministerial determination. We recommend further consideration of the balance between these two elements of the Bill.
Transitional Arrangements	From the date that the Bill comes into effect until the incorporation of the TSO, which	

	<p>should not be longer than five years, the Eskom transmission subsidiary will for all purposes be deemed to be the TSO and must perform the functions outlined in the Bill.</p>	
--	---	--

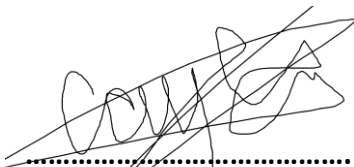
Member Murray noted that the comments would be included in the minutes of the meeting.

Member Murray tabled the draft final mandate on the Electricity Regulation Amendment Bill before the Committees.

Member van der Westhuizen moved for the adoption of the Report. Member Little seconded the adoption of the Report.

The Chairpersons thanked the Members for their participation in the meeting and the consideration of the final mandate on the Bill and adjourned the meeting.

The meeting adjourned at 10h04.



MS CAT MURRAY, MPP
CHAIRPERSON: STANDING COMMITTEE ON FINANCE, ECONOMIC OPPORTUNITIES AND TOURISM



MS M MASEKO, MPP
CHAIRPERSON: STANDING COMMITTEE ON INFRASTRUCTURE Date: