



Electricity Regulation

Licensing, Compliance and Dispute Resolution

Department

Internal Electricity Distribution Licensing

Procedure

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APPLICABLE LEGISLATIONS:

1. *Electricity Regulation Act, 2006 (Act No. 4 of 2006)*
2. *National Environmental Management Act, 2008 (Act No. 62 of 2008)*
3. *National Archive and Records Services Act, 1996 (Act No. 43 of 1996)*
4. *Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)*
5. *Municipal Systems Act, 2000 (Act No. 32 of 2000)*

CITATIONS:

1. *Electricity Licensing and Compliance (ELC) Filing and Archiving Procedures*
2. *Legal Advisory Services (LAS) Dispute Resolution Framework*
3. *Received Licence Application Database*
4. *Archiving Files Register*
5. *Certificate Issuing Database*
6. *Electricity Distribution Licence Application Check List*

1. BACKGROUND

- 1.1 Electricity Licensing, Compliance and Dispute Resolution department (ELC) is within the Electricity Regulation division. One of the core functions of the ELC department is to issue licences in terms of sections 7 and 16 of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) ("the Act").
- 1.2 In terms of Section 7 of the Act, no person may without a licence issued by the Energy Regulator, operate any generation, transmission or distribution facility, import or export any electricity, or be involved in trading.
- 1.3 In terms of section 4 of the Act, the Regulator must consider licence applications and may issue licences for the following:
- a) operation of generation, transmission and distribution facilities;
 - b) import and export of electricity; and
 - c) trading.
- 1.4 NERSA must furnish an applicant with all the necessary information to facilitate the filing of an application for a licence. Application forms attached as **Annexure 1**, can be downloaded from the NERSA's website www.nersa.org.za or can be faxed or emailed to the person who wants to apply for a licence.
- 1.5 The Minister of Department of Energy has not yet prescribed the licensing procedure therefore, in the absence of the licensing procedures, NERSA is issuing licences in terms of the Promotion of Administration Justice Act, 2000 (Act No. 3 of 2000).

2. PURPOSE OF THIS DOCUMENT

- 2.1 The purpose of this document is to outline the administrative procedure that will apply in the processing of the electricity distribution licence applications made in terms of sections 4, 7, 16, and 17 of the Act. The document applies

only to electricity distribution licence applications received such as new issue, amendments, revocations and transfers.

- 2.2 NERSA may amend these procedures from time to time to include changes when they arise.

3. INFORMATION REQUIRED BY NERSA

- 3.1 The required information is in terms of sections 10 and 11 of the Act.

Annexure 2 on page 18 highlights the **Electricity Distribution Licence Application Check List** that need to be complied with by the applicant before an application is forwarded to NERSA.

- 3.2 Every licence application made to the Energy Regulator shall be in writing. Any person or entity seeking a licence must make an application to the HoD: Electricity Licensing, Compliance and Dispute Resolution. The application can be posted, faxed, emailed or hand delivered.

4. ADVERTISEMENT OF THE LICENCE APPLICATION

- 4.1 As stated in section 11 of the Act, when an application is made for a licence, NERSA may require that the applicant provide copies of the adverts as proof. The advert must be in at least two official languages and must state the following:

- a) the name of the applicant;
- b) the objectives of the applicant;
- c) the place where the application will be available for inspection by any member of the public;
- d) the period and hours within which the application will be available for public scrutiny (period 30 days, hours 08h00-15h30);
- e) the fax, postal, physical and email address of the Regulator where any objections may be lodged;

- f) the period (30 days) within which any objections to the issue of the licence may be lodged with the Regulator;
- g) the objections must be substantiated by way of an affidavit or solemn declaration;
- h) such other particulars as may be prescribed;
- i) the advertisement must be published for such period or in such number of issues of a newspaper as may be prescribed; and
- j) an application fee (the amount is not prescribed as yet by the Minister of Department of Energy) per application submitted will be applicable to all licence applications.

5. RECEIPT OF THE APPLICATION BY NERSA

- 5.1 The application will be received by Registry who will date stamp and record it in the register as evidence of receipt, scan it to provide a backup copy. Should any other department/person within NERSA receive the application, it should be sent to Registry for date stamping, recording and re-routing to the relevant department. Recording of the document should include:
- a. the name of the sender;
 - b. the date the document was received;
 - c. the date the document was dispatched; and
 - d. the name and the signature of the recipient.
- 5.2 Registry will send the application to the Administrator in the Electricity Licensing, Compliance and Dispute Resolution department.

6. FILE OPENING OR CREATION

- 6.1 Upon receipt of the application, the Administrator must record the date the application is received from Registry, capture it in the **Received Licence Application Database** and do the following:
- (a) If the application is a new application, the Administrator must:
 - i. acknowledge receipt thereof within five (5) working days;

- ii. allocate a reference number for the application (e.g. NERSA¹/D²/GT422³/13-03-2010⁴);
 - iii. create electronic and hard copy files and keep all the information and documentation submitted with the application in the files.
- (b) If the application is an amendment, transfer or revocation (has an existing file), the Administrator must:
- i. acknowledge receipt thereof within five (5) working days;
 - ii. pull the already existing file;
 - iii. sign out the file in the **Archiving Files Register** to indicate that the file has been removed from the filing room;
 - iv. write their name in full when signing out files;
 - v. indicate the date and time when the file is taken out; and
 - vi. update the existing file with the new information and documentation.

6.2 Files will be kept in the filing room. The Administrator will collect and return files from the filing room and sign out the files in the Archiving Files Register. The process outlined above is elaborated in detail in the **ELC Filing and Archiving Operating Procedures** attached as **Annexure 3**.

6.3 The file will then be handed to the HoD who will assign a member of the Distribution Licensing Unit (Team Leader) to be responsible for the facilitation of the application process until it is finalised.

7. THE LICENSING TEAM

7.1 Within a period of ten (10) working days after the receipt of the application, the Team Leader must convene an internal meeting wherein a team comprised of individuals from the following departments will be formed:

- a) ELC department – as the lead department;

¹ NERSA - National Energy Regulator of South Africa

² D - Distribution

³ GT422 – Demarcation Number

⁴ 13-02-2010 – Date Application Received

- b) Electricity Pricing and Tariffs (EPT);
- c) Electricity Regulatory Reform (ERR);
- d) Electricity Infrastructure Planning (EIP);
- e) Legal Advisory Services (LAS); and
- f) any other department that may be co-opted when necessary.

8. OBJECTIONS TO THE APPLICATION

- 8.1 There are two types of objections that can be received by NERSA during the objection period of an application, they are the following:
- a) objection on interest; and
 - b) objection to the right to supply.
- 8.2 Both objections are received by NERSA and get forwarded to the applicant to be responded within fourteen (14) working days. However, objections to an application by another licensee on the right to supply will be referred to the applicant to negotiate and reach consensus with the objecting licensee regarding the application.
- 8.3 If the negotiations between the applicant and the objecting licensee reach a deadlock, then NERSA will mediate between the parties as per section 30 (1) of the Act if they agree to that.
- 8.4 If after mediation the parties still don't agree, then the matter will be referred to LAS department as a dispute. The dispute resolution process is elaborated in the LAS's **Dispute Resolution Framework**.

9. THE EVALUATION OF INFORMATION

- 9.1 For any received application to be processed, a copy of the application is forwarded to other licensee(s) operating within the vicinity of the supply area applied for.

- 9.2 The processing team that has been constituted as mentioned in 7.1 above shall look at and analyse the different aspects of the application to ensure that the requirements for licensing have been met.
- 9.3 The Team Leader will give the applicant an indication as to when the matter will be finalised (i.e. an indication of when the decision will be made by the Energy Regulator).
- 9.4 The processing team will assess whether the required information has been provided, and whether the information provided by the applicant complies with the requirements set out in section 11 of the Act.
- 9.5 The Team Leader is empowered to request additional information, to make recommendations and/or propose specific provisions that should be included in the licence conditions.
- 9.6 Additional information requested should be submitted timeously to enable NERSA to adhere to the required timeframe as stipulated in section 13 (1) of the Act. Failure to submit the information on the stipulated time, then the information will be obtained during the verification of the information received and network inspection sessions with the applicant.
- 9.7 If the information is not obtained during the verification of information session, then the applicant will be given a period of ten (10) working days to submit failing which, the application will be withdrawn. However, when the application is resubmitted, it will be considered as a new application taking into consideration the new date received.
- 9.8 In assessing the application, over and above the general information, the processing team shall organise the analysis in the following manner:
- a) Legal – to check application's compliance with all the relevant laws e.g. the Act, National Environmental Management Act, 2008 (Act No. 62 of

2008); Municipal Systems Act, 2000 (Act No. 32 of 2000) etc, shall be thoroughly tested.

- b) Financial – assessing the financing arrangements for setting up of the distribution facility, operation and maintenance thereof.
- c) Technical – to check that the applicant has the capacity to meet customer demand; is technically compliant and meet national and industry technical standards and codes.
- d) Economical – to check whether the tariffs applied for is in line with NERSA's approved tariffs.
- e) Regulatory – to advocate regulatory issues amongst different stakeholders.

10. TREATMENT OF CONFIDENTIAL INFORMATION

Applicants must inform NERSA which part of the information provided is confidential. Unless confidentiality is asserted in respect of a licence application, part of that application or information provided in its support will be available for public inspection at NERSA offices. However, NERSA can decide whether the confidentiality claimed by the applicant is acceptable or not, and whether it is in line with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

11. VERIFICATION OF INFORMATION SUBMITTED AND SITE VISIT

11.1 Prior to compiling an Aide Memoire for the public hearing, the following are done:

- a) schedule a meeting with the applicant for:
 - i. the network inspection;
 - ii. confirmation of the area applied for; and
 - iii. applicant assessment; and
- b) an Inspection *in loco* Questionnaire attached as **Annexure 4**, is sent to the applicant for completion prior to the meeting. The questionnaire

should be returned within ten (10) working days prior to the meeting taking place.

11.2 At the meeting and site visit, the processing team note the following:

- a) confirmation of the area applied for;
- b) the applicant's network infrastructure;
- c) network capacity;
- d) network maintenance practice;
- e) network control;
- f) type and number of customers in the electricity supply area applied for;
- g) customer service department operations; and
- h) findings that might render the applicant non-compliant should the licence be issued.

12. PUBLIC HEARING

12.1 After the evaluation of the information collected from the application, the questionnaire and information gathered from the site visit has been concluded, the Team Leader must do the following:

- a) publish a notice of the application in two national newspapers and call for a public hearing;
- b) note that the period of the notice should be ten (10) working days before the public hearing, to give the applicant and the public sufficient time to prepare;
- c) notify the applicant, the affected party or parties and objector/s (if any) about the date, time and the venue of the public hearing in writing.

12.2 Thereafter before the hearing, the licensing team must prepare an Aide Memoire document for the panel of the Electricity Subcommittee. The Aide Memoire is intended to assist the panel in understanding the application, interrogate presenters and make a recommendation to the Electricity Subcommittee.

12.3 On the day of the hearing, the team and the panel will hold a pre-hearing session to highlight the points and comments to be noted on the application.

12.4 After the public hearing, a post hearing session between the processing team and the panellist will be held to discuss the outcome of the hearing and the way forward.

13. THE ELECTRICITY SUBCOMMITTEE MEETING

13.1 The Team Leader will then prepare a draft Reasons for Decision and amended/new licence where applicable for the Electricity Subcommittee meeting. The Team Leader will incorporate the recommendations from the panellist for approval by the Electricity Subcommittee.

13.2 If the draft Reasons for Decision is approved, a recommendation for approval will be made to the Energy Regulator.

13.3 If the application is not approved, then the necessary action will be taken by the licensing team to address the matter.

14. THE ENERGY REGULATOR MEETING

14.1 After the Electricity Subcommittee meeting, the Team Leader will prepare the following documents for approval by the Energy Regulator:

- a) a two pager with the recommendations from Electricity Subcommittee;
- b) Reasons for Decision document.
- c) amended/new licence.

14.2 The documents and the recommendations from the Electricity Subcommittee are considered at the Energy Regulator meeting.

15. IMPLEMENTATION OF THE ENERGY REGULATOR DECISION

15.1 Once the application is approved by the Energy Regulator, the approved Reasons for Decision and approved amended/new licence with all

amendments proposed by the Energy Regulator are finally prepared for the Chief Executive Officer's signature. A notification letter informing the applicant about the outcome of the application is also prepared for the CEO's signature.

15.2 If the applicant was never issued with a certificate, a certificate with a seal will also be signed by the Chief Executive Officer.

15.3 If the Applicant had been issued with a certificate previously, only the amended part of the licence i.e. schedule 1 of the licence is signed by the Chief Executive Officer.

15.4 The Administrator will then forward the following documents to the applicant by email and registered mail:

- a) original copy of the licence certificate;
- b) amended, transferred or new licence;
- c) Reasons for Decision document; and
- d) a notification letter.

16. RECORD KEEPING

16.1 The Administrator will then file copies of the signed documents electronically and as hard copies for future reference. The documents are filed for the duration of the licence.

16.2 Thereafter, the Administrator will update the **Certificate Issuing database** on the Intranet accordingly.

17. PUBLISHING OF THE APPROVED LICENCE ON THE NERSA WEBSITE

17.1 The Administrator will convert the approved hard copy documents to pdf and add the following, before the documents can be published on the NERSA website:

- a) assign a heading/name to the document;

- b) ensure that the name/signature of the person who will post it on the website and the date it will be published, has been procured;
- c) send the documents to Information Resource Management (IRM) department to be published on the website ; and
- d) inform Communications and Stakeholder Management (CSM) department about the documents.

17.2 All approved documents will be posted on the NERSA website, and it will include the following:

- a) approved Reasons for Decision;
- b) approved new/amended/revoked or transferred licence;
- c) signed licence certificate; and
- d) any other document/s approved by the Energy Regulator.

17.3 Inform/update the relevant departments within NERSA about the outcome of the application.

17.4 From the date when the application is received and all the requested additional information is received, to the date the Energy Regulator makes its decision, should not take more than a period of hundred and twenty (120) days as required by Section 13 (1) of the Act. The table below outlines the activities and the time allocation. The days allocated are working days and does not include public holidays or weekends.

ANNEXURES:

Annexure 1 – Electricity Distribution Licence Application Check List

Annexure 2 – Electricity Distribution Application Form

Annexure 3 – ELC Filing and Archiving Operating Procedures

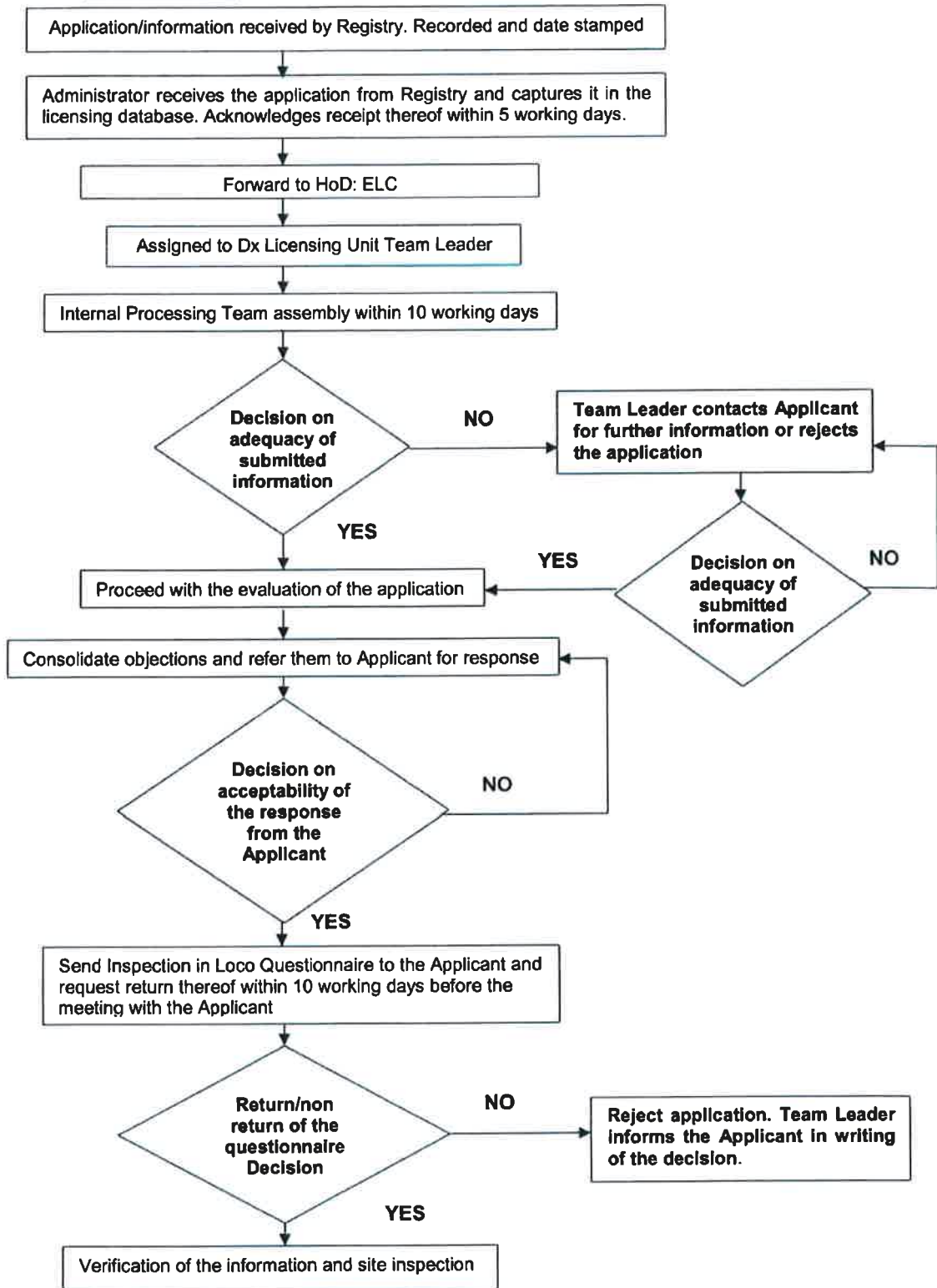
Annexure 4 - Inspection in loco Questionnaire.

Time Table 1: Activities and time allocated (provided there are no delays).

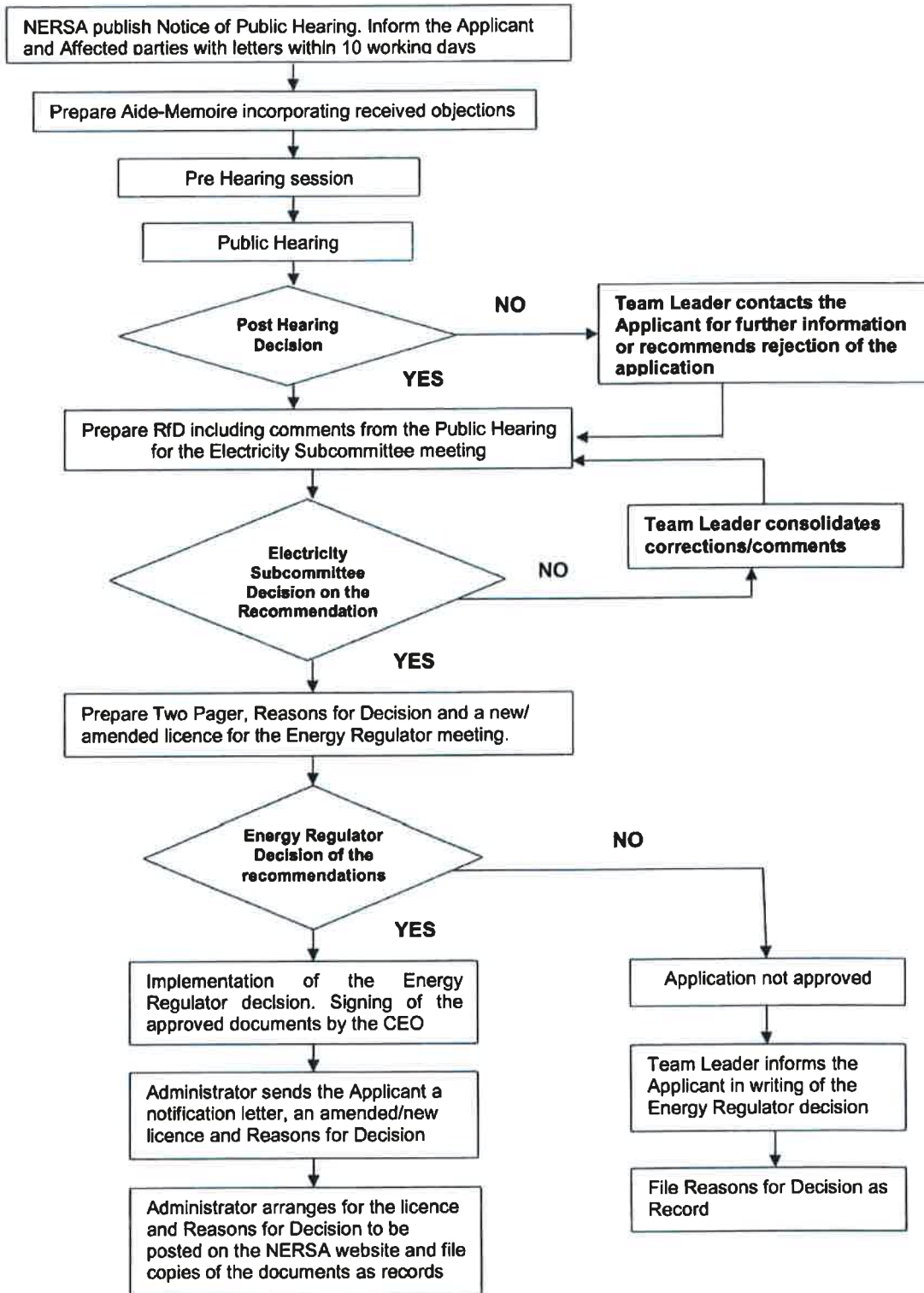
Activity	Time Allocated	Responsible Person(s)
Receipt of the application	1 day	Registry
Acknowledgement of receipt	5 days	Administrator
File opening/creation	1 day	Administrator
File allocation	1 day	HoD
Team formation	1 day	Team leader
Evaluation of the information	5 days	Team
Application advertisement by the Applicant	30 days	Applicant
Completion and return of the Inspection <i>in loco</i> Questionnaire by the Applicant	10 days	Applicant
Verification of the information and site visit	2 days	Team
Public hearing advertisement by NERSA	10 days	Team leader
Preparation of the Aide-Memoire	5 days	Team leader
Public hearing	1 day	RSU Dept
Subcommittee submission compilation	5 days	Team leader
Submission review	2 days	HoD
Submission review	2 days	EM
Submission authorisation	2 days	PRRM
Submission consultation	2 days	CEO
Submission pack distribution	5 days	RSU Dept
Subcommittee recommendations for approval	1 day	ER
ER submission compilation	5 days	Team leader
ER submission review	2 days	HoD
ER submission review	2 days	EM
Submission authorisation	2 days	PRRM
Submission consultation	2 days	CEO
ER submission pack distribution	5 days	RSU Dept
ER meeting (Approval)	1 day	ER
Implementation of ER decision	3 days	CEO
Applicant notification of the ER decision	3 day	Administrator
Record keeping	1 day	Administrator
Publishing on NERSA website	3 days	IRM/CSM Departments

Flow Charts 1 and 2 on page 16 and 17 depict a schematic workflow process.

Flow Chart 1: Information and Evaluation Stage



Flow Chart 2: Final Stage



Annexure 1:

ELECTRICITY DISTRIBUTION LICENCE APPLICATION - CHECKLIST

		Description	√	X
1.	Application	Formal application letter written on the Applicant's letterhead.		
2.	Location	The name of the area in question and the exact location (e.g. North/West of Meyerton, between Lakeside and Orange Farm or adjacent to Debonair Park, in Midvaal, Gauteng Province).		
3.	Full Background	Type and number of houses, businesses, commercial, recreational centres etc.; whether the area is a green, brown field etc.		
4.	Proclamation Information	Whether the area has been proclaimed, if not, whether the proclamation process is in progress.		
5.	Nodal Map	A scaled map with GPS co-ordinates that depicts the layout of the zoning and subdivision of the supply area applied for.		
6.	Council Resolution	A copy of the resolution taken by the Council/Executive Management of the Applicant that an application be made to NERSA.		
7.	Budget Provision	Information on how the project will be financed, or whether provision has been made in the current financial year's budget for the project.		
8.	Consent Letter	A letter from the affected party agreeing to the take-over of the area or transfer/revocation of a licence.		
9.	Technical Information	Description of the network e.g. bulk supply points, substation name, installed capacity and maximum demand.		
10.	Tariff Information	Explanation of the tariffs to be implemented.		
11.	Section 11 Requirements	Applicant adherence to the requirements of section 11 of the Act. The application will not be considered if this section is not adhered to.		
12.	Application Advertisement	Advertisement of the application in two newspapers or media circulating in the area. Copies of the newspaper clippings must be sent to NERSA as confirmation.		