

NERSA Rules for Licensable Distribution Areas of Supply

Version 01

08 August 2019

Issued by

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1. INTRODUCTION

The South African Electricity Distribution Industry comprises mostly NERSA licensed municipalities and Eskom that are involved in the supply of electricity to customers and end-users. These current and prospective customers and end-user are situated within a wall-to-wall municipal demarcated area determined by the Demarcation Board in terms of the Municipal Demarcation Act, 1998 (Act No. 27 of 1998). The Constitution of the Republic of South Africa has vested executive authority in respect of electricity reticulation to local government and also recognised the existence of other spheres of government.

These Rules recognises various spheres of national legislations that compliments the regulation of the industry and management of the operations on such entities the laws are applicable to. The Rules further distinguishes electricity regulation through licensing in terms of the Electricity Regulations Act, 2006 and determination of municipal boundaries in terms of the Demarcation Act. There is no conflict that exist in the application and enforcement of the two legislations. Eskom as an organ of state as defined in the Constitution of the Republic of South Africa and enabled to supply electricity in terms of Eskom Conversion Act, 2001 (Act No. 13 of 2001), is not prohibited from holding a distribution licence and to supply electricity to its customers.

These Rules are not aimed at formulating an opinion on the powers of either local government or Eskom with regard to the interpretation or application of section 156 of the Constitution of the Republic of South Africa but aimed at providing a framework on the determination of licensable area and licensing as such in terms of the ERA.

The industry has evolved over the years and electricity service delivery has come to the forefront of economic and social growth. To enable development and promote a level playing field for all distributors, the National Energy Regulator (NERSA) has consulted stakeholders and developed Rules on how future areas of supply would be licensed.

The Rules for Licensable Distribution Areas of Supply were developed to advance the powers and duties of NERSA as contemplated in section 4(b),(c),(d) and (g) of the Electricity Regulation Act, 2006 (Act No.4 of 2006). The granting of distribution licences for the operation of Distribution facilities as per section 4(a) of the Act preceded the development of these Rules and do not apply to Licensed areas of supply already approved by NERSA.

The Rules contain the requirements and criteria for licensing of a licensable area(s) of supply, including an area that is about to be electrified or already electrified through any means including

but not limited to the Department of Minerals Resources and Energy's Integrated National Electrification Programme (INEP) funding. The Rules shall apply to all Distribution Licensees intending to apply for the inclusion of a licensable area of supply in its Licence.

2. DEFINITIONS

Any words not defined in these Rules shall have the meanings assigned to them in the Electricity Regulation Act, 2006 (Act No.4 of 2006) (ERA), as amended from time to time, and the Codes approved by NERSA. In the event of conflicting definitions, the definitions contained in the ERA shall take precedence:

Brown field means an area that has had some development, been rezoned and proclaimed, previously had an existing electrical connection(s) for a specific use and the same connection was terminated because of the rezoning and/or proclamation of the same property resulting in the demolition of the existing connection to make way for a new supply which is greater than the one previously supplying the property;

Customer means a person who purchases electricity or a service relating to the supply of electricity;

Distribution means the conveyance of electricity through a Distribution System excluding trading, "distribute" and "distributing" have corresponding meanings;

Distribution Licence means the permission granted by NERSA to operate electricity in terms of the Electricity Regulation Act, 2006 (Act No.4 of 2006);

Distributor means a person licensed by NERSA to distribute electricity;

End-User means a user of electricity or a service relating to the supply of electricity;

Eskom means Eskom Holdings SOC Ltd, Reg. No.2002/015527/30, a state owned company incorporated in terms of Eskom Conversion Act, 2001 (Act No. 13 of 2001) and mandated to distribute electricity;

Green field means an area that has never had any electrical connection;

Licensed Area(s) of Supply means the NERSA approved Area(s) of Supply referred to in Schedule 1 of an electricity distribution licence issued by NERSA;

Licensable Area of Supply means a specific area, Green field or Brown field that is eligible for licensing by NERSA;

Municipality means a category of municipality that has executive authority over and the right to administer reticulation of electricity within its area of jurisdiction;

National Energy Regulator (NERSA) means the regulatory authority established in terms of the National Energy Regulator Act, 2004 (Act No. 40 of 2004), or its legal successor;

Network means the electrical infrastructure over which electrical energy is transported from source to point of consumption;

Reseller means a person who purchases electricity from a distribution licensee in order to sell such electricity to a customer of that licensee.

Stand-Alone Customer means a Customer / User which does not fall within a Licensed or Licensable Area of Supply, supplied at Medium Voltage (MV) or Low Voltage (LV) and has an individual metered Point of Supply (PoS).

3. ACRONYMS AND ABBREVIATIONS

DMRE	Department of Minerals Resources and Energy
ERA	Electricity Regulation Act, 2006 (Act No. 4 of 2006)
GIS	Geographical Information System
INEP	Integrated National Electrification Programme
IDP	Integrated Development Plan
LV	Low Voltage
MV	Medium Voltage
NERA	National Energy Regulator Act, 2004 (Act No. 40 of 2004)
NERSA	National Energy Regulator of South Africa
PoD	Point of Delivery
PoS	Point of Supply

4. NERSA MANDATE

- 4.1 NERSA was established in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) (NERA) to undertake the functions set out in section 4 of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) (ERA).
- 4.2 The objective of NERA is, among others, to ensure the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure within South Africa. The objectives are best achieved through licensing, the determination of tariffs and the development of rules, codes and guidelines.
- 4.3 In terms of the ERA, no person may without a licence issued by NERSA operate any distribution facility. In consideration of the developmental and the discretionary powers that NERSA has with regard to making guidelines and publishing codes of conduct and practice, this regulatory Rule serves to provide a framework for the inclusion of a licensable area of supply into Schedule 1 of an Electricity Distribution Licence.

5. OBJECTIVE OF THE RULES

- 5.1 The objectives of the Rule are to set the regulatory requirements to be followed by all Distributors and the criteria to be considered by NERSA for determining the incorporation of a new area of supply into an Electricity Distribution Licence Schedule 1 (List of Areas of Supply). These shall be based on the qualifying principles; Legal, Financial, Economical and Technical requirements.

6. CO-OPERATION AMONGST LICENSEES

6.1 NETWORK AND CAPACITY PLANNING

- 6.1.1 All Distribution licensees shall compile Network Development Plans as contemplated in the Distribution Code detailing network and capacity planning, development and investments relevant to future licensable areas of supply.
- 6.1.2 Where a Licensee (i.e. Licensed Municipality) is a Customer of another Licensee (i.e. Eskom), then the Licensed Municipality shall ensure that Local Integrated Resource Plan, Integrated Development Plan, system performance statistics, its 10 year load forecast at its incoming Point of Supply (PoS) or Points of Delivery (PoD) and network development plans with minimum window period of five years are shared with Eskom

to integrate it into its Network and Capacity Planning relevant to Green Fields, Brown Fields and future Stand Alone customers.

- 6.1.3 Subsequent to provision of such abovementioned information to Eskom, Eskom's network development plans shall be shared or made available to the Licensed Municipality, which is its customer, on request.

6.2 REFERRAL TO THE APPROPRIATE LICENSEE

- 6.2.1 Where it is evident and practically feasible that another Distribution Licensee is demonstrably best placed to supply a new area of supply, the licensees shall co-operate with each other to ensure the best solution from a country perspective.
- 6.2.2 Where competing Distribution Licensees are of the view that both licensees are equally placed to supply a new area then either licensee may lodge an application to NERSA.

6.3 COMMUNICATION BETWEEN LICENSEES

- 6.3.1 In order to ensure the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure within a municipal boundary, in line with section 2(a) of the Electricity Regulation Act, 2006 (Act No.4 of 2006), Licensees shall at all times inform, communicate and co-operate with each other regarding new network planning (as contemplated in section 6.1 above), network construction, new electrification projects, new Stand-Alone Customers' connections where the customer is already within a licensed supply area and Licensable Areas of Supply. These communications and sharing of information can be in form of Council Resolution, Integrated Development Plan (IDP) documents, Letters of Support etc.
- 6.3.2 Where competing Distribution Licensees are of the view that this section is not adhered to by any of the Licensees and the conduct of such Licensee violates the regulatory determination in as far as licensing is concerned, a complaint may be referred to NERSA for resolution. NERSA may require proof of communication to ascertain adherence to this section.

6.4 SUPPLY AREA EDGE INCREASE

- 6.4.1 Supply area edge refers to the increase of an area of supply through additional or new ervens/stands in an existing rezoned and proclaimed area of supply or addition of new properties in an area with same name requiring electricity connection. The additional ervens/stands/properties are to be within same rezoned area, proclaimed name or common name. The following shall apply:
- a) The licensee shall inform NERSA in writing of the changes in the already licensed area of supply polygon for update on NERSA GIS.
 - b) NERSA shall conduct an inspection in loco to confirm the increase in the area of supply edge and identification of the delineation of the area of supply.
 - c) NERSA shall forward the licensee with an approved updated polygon of same area of supply as updated on NERSA GIS.
 - d) Expansion of a licensed area of supply shall not advance beyond any form of delineation e.g. road, river, servitude, railway line etc., into another Licensees area of electricity supply.

6.5 AGREEMENTS BETWEEN LICENSEES SUPPLYING THE SAME GEOGRAPHIC AREA

- 6.5.1 NERSA acknowledges the legacy of the past where the same geographic area or same proclaimed area or same zoned area has two or more licensees and there is no clear delineation e.g. road, river, servitude, railway line etc. These legacy situations have been mapped and highlighted through NERSA GIS and NERSA endeavours to avoid such in its licensing mandate.
- 6.5.2 Licensees supplying within the same geographic area shall engage and agree on which licensee is best suited to supply the said area and which licensee shall transfer or handover the existing assets on a fair and reasonable cost in line with all National Treasury requirements.
- 6.5.3 Consent letter will be required by NERSA when processing such transfer or handover applications in accordance with the Electricity Distribution Licensing Procedure.
- 6.5.4 NERSA shall endorse/approve such agreement reached by those licensees and thereafter the due licensing process shall follow to ensure the area(s) agreed upon is included in the areas of supply for the receiving licensee. However, where an

agreement is not reached by those licensees then either licensee may refer the matter to NERSA.

6.6 DMRE INEP FUNDED ELECTRIFICATION LICENSING

6.6.1 The Licensees shall on an annual basis (at time specified by the Department of Mineral Resources and Energy (DMRE)) submit the intended electrification plan to the DMRE. Once the projects are gazetted and contracted, NERSA shall obtain the new electrification projects and plans from the DMRE for consideration of inclusion into the Licensees area of electricity supply. See Flow Chart 1 in Appendix B: Department of Mineral Resources and Energy (DMRE) INEP Funded Projects Licensing.

6.6.2 In case of Priority Projects, (i.e. Special Ministerial projects) or electrification projects funded by any state organ or any government department, on an urgent basis, an application must be forwarded to NERSA prior to or during the project execution.

6.7 CONNECTION OF NEW STAND-ALONE CUSTOMER(S)

6.7.1 Where a new Stand-alone customer requires a connection and an area has not been licensed as a licensed area of supply, either Eskom or a Municipality may connect the customer. The decision of Distribution Licensee to connect a Stand-alone customer shall depend on the proximity and technical ability to make a supply available. Connecting a customer does not reserve or create any right to a future licensable area of supply.

6.7.2 Where competing Distribution Licensees are of the view that both licensees are equally placed to supply a Stand-alone customer and a dispute arises between the licensees, such dispute may be referred to NERSA for resolution based on economic, technical and safety factors e.g. to avoid traversing licensees' networks.

6.8 CONNECTION OF ELECTRICITY RESELLERS

6.8.1 Licensees must ensure that Resellers as contemplated in the Licensing Exemption and Registration Notice No. 1231 of 10 November 2017, must be registered with the NERSA having concluded an agreement with a Licensee and the area to be reticulated by the Reseller has been licensed in terms of these Rules.

6.8.2 Should a Reseller be in a form of a Stand-alone customer and competing Distribution Licensees are of the view that both licensees are equally placed to supply and a dispute arises between the licensees, such dispute may be referred to NERSA for resolution based on economic, technical and safety factors e.g. to avoid traversing licensees' networks.

6.9 EXCLUSIONS FROM BEING A LICENSABLE AREA OF SUPPLY

6.9.1 Stand-Alone or Individual end-user customers in form of a farm, small holdings or plot supplied at Medium Voltage (MV) or Low Voltage (LV), or having individual Point of Supply (i.e. transformer and individual metered point) are not regarded as a licensable area of supply but individual end-user customers or Stand-Alone customers.

6.9.2 In-fills or edge increase to a licensed area of supply are deemed to be already licensed.

6.9.3 Off-Grid Own Use customers are excluded from being a Licensable Area of Supply, however shall be identified by Licensees and mapped on the NERSA GIS.

7. APPLICATION REQUIREMENTS

7.1 Applications for an area of supply to be licensed must be lodged with NERSA in terms of Sections 4, 8, 16, and 17 of the ERA and in accordance with the NERSA approved Electricity Distribution Licensing Procedure. The Electricity Distribution Licensing Procedure and relevant forms can be downloaded from NERSA's website www.nersa.org.za or a written application letter can be emailed or faxed to NERSA by the applicant.

7.2 Any application lodged with NERSA shall be finalized in 120 days in accordance with Section 13 of the ERA.

8. CRITERIA FOR DECIDING ON THE INCLUSION OF AN AREA OF SUPPLY

- 8.1 NERSA shall consider, amongst other, the following criteria when assessing an application:
- a) Evidence that there has been an engagement or reasonable attempts to engage in a discussion between licensees operating within a single municipal geographic area.
 - b) There has been effective Network Development Planning based on accurate load forecasting models.
 - c) Demonstrate the least life cycle cost requirement, considering cost to the Licensee.

- d) Adequacy of the application with the provision of relevant and other additional information NERSA may request to support the application.
- e) Demonstrate that the principles of Co-operation amongst Licensees, Section 6 above, have been adhered to.
- f) The application must be accompanied by proof of budget approval for such area to be electrified (i.e. INEP or any granted funding).
- g) Demonstrate safe network operating and maintenance including but not limited to:
 - i. Clear and identifiable delineation between the intended supply area and adjacent supply area(s) serviced by other Licensee(s);
 - ii. No overlapping of Supply Area(s) (GIS polygons to confirm); and
 - iii. No crossing of existing Medium Voltage (MV) /Low Voltage (LV) line(s) or cables.

9. PROHIBITED ACTIVITIES RELATING TO AREAS OF SUPPLY

9.1 The following activities are prohibited:

- a) Licensees must avoid supplying same area, GIS polygons to confirm.
- b) Licensee shall not electrify end-users and/or customers within an area which is eligible for licensing simply to fore-book that area.
- c) Licensee must not lodge a dispute on an unlicensed electrified area after the supply area is energised but before the electrification project commences.
- d) Licensee shall not supply any area without NERSA's approval.
- e) Electrification of rezoned area(s) (i.e. with other installed services e.g. roads, water infrastructure etc.) shall be done per invitation by a Local or Metropolitan Municipality (IDP letter required).

10. OBJECTIONS RELATING TO LICENSABLE AREA OF SUPPLY

10.1 Two types of objections may be lodged with NERSA during consideration of an application;

- a) objections on interest; and
- b) objections to right to supply.

10.2 Objections to an application by another licensee on the right to supply by the applicant shall be referred to the applicant to negotiate and reach consensus with the objecting licensee. However, NERSA shall take into consideration the following:

- a) The Licensee's willingness and financial ability to supply end-users at the least possible cost;
- b) The threshold number of end-user customers in the area to be a licensable area;

- c) The closest electricity network to the area of concern; and
- d) Licensee's capacity to electrify the concerned area.

- 10.3 The Department of Mineral Resources and Energy (DMRE) shall be involved in an objection or dispute that involves INEP funded electrification and may be allowed to make the final ruling or decision on which licensee owns the area electrified through INEP funding.
- 10.4 Should the negotiations between the applicant and objecting licensee reaches a deadlock, the parties shall agree that NERSA mediate between the parties.
- 10.5 If after mediation, the parties still do not agree, the matter shall be referred to NERSA for arbitration. The parties shall agree on the Terms of Reference (ToR) where NERSA's decision shall be final. The process outlined above is elaborated in the NERSA Complaint and Dispute Resolution Procedure.

11. CONCLUSION

- 11.1 These Regulatory Rules shall be revised from time to time to accommodate the lessons learnt out of the implementation of these Rules and/or from lessons learnt from area of supply disputes between licensees.
- 11.2 These Regulatory Rules shall be revised after the promulgation of the relevant licensing Regulations made under the Electricity Regulation Act, 2006 (Act No. 4 of 2006) or when any other relevant Legislation changes.

ANNEXURE A

EXISTING LEGISLATION, STANDARDS, CODES

The Rules of Licensable Distribution Areas of Supply shall be read in conjunction with, but not limited to: Acts, Regulations and other NERSA approved documents. These are listed in the table below.

Legislation, Codes, Procedures and Standard
1. National Energy Regulator Act, 2004 (Act No. 4 of 2004)
2. Electricity Regulation Act, 2006 (Act No. 4 of 2006)
3. Division of Revenue Act, 2016 (Act No. 3 of 2016)
4. Municipal Systems Act, 2000 (Act No. 32 of 2000)
5. Licensing Exemption and Registration Notice No. 1231 of 10 November 2017
6. South African Distribution Code Version 6.0
7. NERSA Distribution Licensing Procedure
8. NERSA Complaint and Dispute Resolution Procedure

APPENDIX B

Department of Mineral Resources and Energy (DMRE) INEP Funded Projects Licensing

- a) The Licensee's intended electrification plan(s) shall be sent to Department of Mineral Resources and Energy (DMRE) must include IDP Letters from the individual municipalities for each and every project on the list.
- b) A Geographic Map or Surveyor General (SG) Plan with corresponding Geographic Information System (GIS) polygon indicating the listed electrification projects (i.e. area intended to be electrified) including project capacity demand forecasting or three years' growth to be submitted. The Map or GIS area polygon to be signed off by both Eskom and the Municipality.
- c) DMRE shall share with NERSA a list of Schedule 5B projects to be undertaken once the DMRE has reached an agreement with the Municipality. The submission may include a Map or SG Plan or GIS area polygon (as mentioned above) and the signed agreement if available.
- d) For Special Ministerial Projects, the licensee to submit the Project, plus a Map or SG Plan or GIS area polygon plus a letter from DMRE indicating the special nature of the project plus an official letter from the Municipality.
- e) NERSA to ensure the following when evaluating DMRE electrification projects, which are:
 - Separate Household Connections as new area(s) of supply from DMRE's Final Contracted projects (i.e. based on the Gazette) for licensing and Schedule 1 (List of Areas of Supply) amendment.
 - The recipient of INEP funding for house connections or new area of supply must follow NERSA Distribution Licensing Procedure as indicated on **Flow Chart 1** below.
 - Should there be some changes during the year (following the DMRE Change Management Process) the same information should be supplied to NERSA prior to NERSA giving the go ahead to proceed with the project.
 - For any Special Project to be implemented during the year' on request of Government, the same information as listed above are to be provided. Since these projects might not be included in a Gazette a formal letter from DMRE to be submitted as part of the application to NERSA.

Flow Chart 1: Integrated Electrification Projects Licensing Process

