

# **NATIONAL ELECTRICITY REGULATOR**

## **TRANSMISSION LICENCE**

Issued in terms of Section 6 of the Electricity Act (Act No. 41 of 1987 as amended) hereinafter referred to as "the Act".

### **NATIONAL TRANSMISSION LICENCE NO. 1**

#### **(Variation 2)**

The National Transmission licence No. 1 which was granted to Eskom on 31 August 1995 is hereby amended in terms of Section 11 of this Licence, to cater for:

- a) the amended legal status of Eskom;
- b) the changes in Eskom operations;
- c) enhanced regulatory requirements;
- d) the promotion of competition in the electricity supply industry by, among others, permitting open and non-discriminatory access to the national transmission system - as defined more specifically in the **Grid Code, (listed in the Appendix)**, the terms of which are specifically incorporated herein. This amended licence is granted to:

#### **Eskom Holdings Ltd**

Reg. No. 2002/015527 06

(Hereinafter referred to as "the Licensee")

only for

the operation of its Transmission Division, which must be conducted in the area as defined in Schedule 1 Part 1 and which business shall be conducted as the National Transmission Company, with the assets as defined in the **Appendix** attached and in accordance with the prescripts contained in this licence. This licence shall be effective for this business unit of the Licensee until it is properly incorporated, either as a wholly owned subsidiary of the Licensee or until incorporated as a separate, national, state-owned transmission company (the NTC).

The conduct of this operating division under this licence is subject to the conditions as identified below, or later revisions to these conditions as are approved by the National Electricity Regulator (hereinafter referred to as the NER) and which must be adhered to, in terms of Section 12 of the Act.

Copies of authorised revisions of the documents listed in the Appendix as well as copies of other authorised procedures identified by the NER and the revisions of these, must be submitted to the NER within thirty (30) days of their authorisation.

**ISSUED at Pretoria on the (1<sup>st</sup>) day of (April 2004)**

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**CHIEF EXECUTIVE OFFICER**  
**NATIONAL ELECTRICITY REGULATOR**

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## 1. DEFINITIONS AND INTERPRETATION

In this licence, words and phrases, shall have the meaning ascribed to them in the definition section of this licence in Schedule 1 Part 2 and must be interpreted in accordance with the rules for interpretation contained in Schedule 1 Part 3.

## 2. GRANT OF LICENCE

The **National Electricity Regulator**, in exercise of the powers conferred by section 6 of the Act, hereby licenses **Eskom Holdings Limited** (hereinafter referred to as "**the Licensee**") to operate a Transmission Division in the area designated in Schedule 1 Part 1, as the National Transmission Company. The prescribed undertakings of the Licensee for this operating division are as defined in section 4 of this licence.

## 3. TERM OF LICENCE

This licence shall come into force on (**1 April 2004**) and shall continue unless modified or revoked in accordance with the provisions of section 11 and 12 of this licence, to accord with government policy.

## 4. PRESCRIBED SERVICES OF LICENSEE

The licensee shall conduct the Transmission Division of its business to undertake the following key activities for the electricity supply industry, namely that of **Transmission Network Service Provider, System Operator, Transmission System Planner, Grid Code Secretariat** and the **Integrated Resource Planner**, with the responsibilities as set out below.

The licensee may only conduct any other business with the Transmission Division, including business with the regulated assets constituting Transmission System, subject to the approval of the NER.

The terms on which the Licensee, in conducting its business under this Licence, provides any other service, other than those prescribed above, must be fair and reasonable.

Any question as to the fairness or reasonableness of such terms shall be decided by the NER on the basis of the NER's opinion of the fairness or reasonableness of the terms.

The Transmission Division, in conducting its business under this Licence is prohibited from buying and selling energy, other than for its own use.

#### 4.1 THE TRANSMISSION NETWORK SERVICE PROVIDER (TNSP)

- 4.1.1 The Transmission Division shall, operate and maintain the Licensee's assets constituting its transmission network in accordance with the **Grid Code** in order to transmit electricity across the **Transmission System** within the area designated in schedule 1.
- 4.1.2 The Licensee may own, operate/ or maintain defined transmission transformation equipment and assets on the Distribution System as agreed with **customers**.
- 4.1.3 The Licensee is obliged to make an offer to connect onto its transmission network or to increase the capacity of an existing connection to:
- a) A holder of a generation, distribution network or transmission network licence, or a person who has been exempted by the **NER** from holding any of these licences.
  - b) A person which is, or intends to become, a **customer** taking supply directly from the Licensee's transmission network subject to:
    - Receiving a request to do so with all the necessary information;
    - The **customer's** ability to pay for the service requested; and
    - Relevant technical constraints to be determined through consultation with such person(s).
- 4.1.4 The Licensee shall deal with such requests for connection in accordance with the **Grid Code**.
- 4.1.5 The Licensee shall, through its Transmission Division, offer to enter into connection agreements within:
- a) The time periods specified in the **Grid Code**; or
  - b) Such other period as the **NER** decides to be reasonable.
- 4.1.6 The Transmission Division shall enter into operating agreements with all entities connected to the Licensee's transmission network, defining their reciprocal obligations, in accordance with the **Grid Code**.

## 4.2 THE SYSTEM OPERATOR (SO)

4.2.1 The Transmission Division shall control the operation of and be responsible for the short-term reliability of the interconnected power system (**IPS**) as defined in the **Grid Code**. In so doing the Licensee shall act in accordance with the prevailing **Grid Code** and **Market Rules** in order to:

- a) Ensure system reliability, safety and security;
- b) Dispatch generation;
- c) Set operational procedures;
- d) Control the operations of the **IPS**;
- e) Acquire sufficient **ancillary services**;
- f) Provide operational information to the industry and
- g) Define, on an annual basis in agreement with **customers**, the demarcation for the **IPS** (Schedule 4).

4.2.2 In execution of its responsibility for system reliability, the Transmission Division shall have authority over the operation of the **IPS**, in accordance with the provisions of this licence, the **Grid Code** and **Market Rules**.

4.2.3 The Licensee shall ensure non-discriminatory access to users of the Transmission System.

4.2.4 The Licensee shall, through its Transmission Division, offer to enter into use-of-system agreements within:

- a) The time periods specified in the **Grid Code**;
- b) Or such other period as the **NER** decides to be reasonable.

4.2.5 No person shall be entitled to access the **Transmission System** unless that person has agreed to pay a reasonable charge. The **NER** shall approve the methodology for the determination of a reasonable charge.

4.2.6 The Licensee shall facilitate the export and imports of electricity in accordance with whatever agreements may exist regarding international energy trading.

## 4.3 TRANSMISSION SYSTEM PLANNER (TSP)

4.3.1 The Licensee shall, through its Transmission Division, plan and augment the **Transmission System** in accordance with the **Grid Code**.

4.3.2 **Augmentation** shall take place subject to:

- a) A connection agreement with a **customer** where a new connection or extension to an existing connection is made.
- b) If the Transmission Division determines that **augmentation** of the **Transmission System** is required, the **TNSP** shall augment the **Transmission System** in accordance with efficient business and procurement practices.

#### **4.4 GRID CODE Secretariat**

- 4.4.1 The System Operator within the Transmission Division is appointed as the **Grid Code Secretariat** in terms of the **Grid Code**, to be responsible for administering the application of the **Grid Code** for users of the **IPS** and recommending the appropriate changes to the Code, subject to the approval of the NER.

#### **4.5 INTEGRATED RESOURCE PLANNER**

- 4.5.1 The Licensee shall annually compile and publish a national indicative resource plan for the electricity supply industry, as directed by the **NER**.

#### **5. SEPARATE ACCOUNTS FOR ELECTRICITY TRANSMISSION BUSINESSES**

- 5.1 The Licensee, as a holding company, shall maintain separate and ring-fenced accounts for the elements of its Transmission Division as defined in schedule 3, so that the revenues; costs; assets; liabilities; reserves and provisions for, or reasonably attributable to the **transmission system** are separately identifiable in the books of the Licensee from those of any other business.

- 5.2 The Licensee shall prepare on a consistent basis from such accounting records in respect of the financial year of the Licensee, and each subsequent financial year, accounting statements comprising.
  - a) an income statement;
  - b) a balance sheet;

together with notes thereto, and in appropriate detail, the amounts of any revenue, cost, asset, liability, reserve or provision which has been charged from or to any other business together with a description thereof.

- 5.3 The Licensee shall annually submit audited copies of such accounting statements to the **NER** within 180 days of the end of the Licensee's financial year.

5.4 The conduct of any other business undertaking by the Licensee carrying on business under this licence shall be in accordance with sound ring-fencing principles applied to the conduct of such undertaking and shall further be in accordance with any guidelines as may be issued by the NER from time to time.

## 6. PRICES & TARIFFS

6.1 The **NER** shall approve the tariffs at which the Licensee shall charge for the use of its Transmission Network and for the connection of its **customers** to the Transmission Network. This tariff approval shall be done in accordance with transmission regulatory methodology published by the NER.

6.2 The Licensee is not permitted to charge any other tariffs than those specified in the schedule of approved tariffs set out in schedule 2 hereto, as revised from time to time, without the approval of the **NER**.

## 7. COLLECTION AND EXCHANGE OF INFORMATION

The **NER** shall be entitled to collect such information from the Licensee or its **customers**, as it deems necessary. The Licensee is further obliged to ensure that it provides such information as is necessary to **customers**, to facilitate the development of a market, in accordance with the prevailing **Grid Code** and or **Market Code**.

## 8. SETTLEMENT OF DISPUTES

8.1 The **NER** is entitled to settle disputes between the Licensee and its **customers** or prospective customers or any person affected by the operation of this undertaking regarding -

- a) the right to transmit;
- b) the provisions of the **Grid Code**;
- c) the prices at which services are provided;
- d) delays in or refusal to provide a service by the Licensee; and
- e) any other matter in respect of which the Licensee or its consumers requests the **NER** to act as mediator.

8.2 Any decision of the **NER** on a dispute as contemplated in section 8.1 above is binding on the parties to the dispute.

## 9. PROHIBITION OF TRANSFER OF RIGHT TO PROVIDE A SERVICE

This licence is not transferable without the approval of the **NER**.

## 10. FAILURE TO CARRY OUT CONDITIONS OF LICENCE

The Licensee shall not derogate from the conditions contained in this licence with reference to the conduct of its Transmission Division under this licence for the provision of any services conducted under this licence, unless it can demonstrate good cause to the NER for such derogation.

The NER shall decide what constitutes good cause, by taking into account all matters pertinent to the case under consideration.

The Licensee shall also not, except for reasons beyond its control, reduce or discontinue the transmission of electricity to a **customer** unless –

- a) the **customer** is insolvent; or
- b) the **customer** has failed to pay the agreed charges or to comply with the conditions of service delivery and has failed to remedy the default within 14 days, or within such longer period as may be specified by the **NER**.

In the event of non-compliance by the Licensee with any of its duties and obligations under this Licence, NER may take any or all of the following enforcement actions:

- (a) Issue a notice requiring the Licensee to remedy the breach within a set period;
- (b) In the event of the breach not being remedied, issue such penalties as may be permitted by legislation or regulation;
- (c) Require the Licensee to deliver a report by a set date, setting out the causes of the failure to comply with its duties and obligations, and the action taken to prevent a re-occurrence of the breach;
- (d) Undertake an enquiry into the failure to comply. The Licensee shall co-operate with such enquiry and failure to co-operate shall be considered a further breach of its obligations;
- (e) Issue directives as to how the Licensee shall in future act so as to prevent further failures to comply;
- (f) Revoke the Licence in terms of Section 12 of this Licence.

## 11. MODIFICATION OF LICENCE

The **NER** may modify the conditions of this licence -

- a) with the agreement of the Licensee; or



- b) failing such agreement, after 30 days due notice has been given to the Licensee by the **NER** and after consideration of any representation or objections.
- c) after due consideration of any representations made by the Licensee.

## **12. REVOCATION OF LICENCE**

- 12.1 The **NER** may at any time agree with the Licensee that this licence should be revoked, in which case the term of the licence ends on the day agreed.
- 12.2 The **NER** may at any time give 30 days notice of revocation to the Licensee if the Licensee does not comply with any of its duties and obligations, and the Minister determines that it is necessary or desirable to revoke this licence, in which case the term of this licence ends on the expiration of the period of the notice. The term of this licence does not end at the expiration of the period of a notice of revocation given under this paragraph if, before the expiration, the Licensee complies with its duties or obligations.

## **13. POWERS OF ENTRY AND INSPECTION**

The **NER**, or any person authorised by it in writing, may enter upon premises of the Licensee and be entitled to inspect any equipment, plant, machinery, books, accounts and other documents of the Licensee.

## **14. FURNISHING OF RETURNS**

The **NER** may call upon the Licensee to furnish to it such periodical or other returns in such form as the **NER** may from time to time prescribe, and such particulars in respect of the undertaking as the **NER** may from time to time demand.

## **15. COMPLIANCE WITH LAWS AND REGULATIONS**

The Licensee shall comply with all applicable laws and especially those governing the electricity supply industry including regulations, codes, directives, guidelines as effected from time to time.

The licensee shall transmit the electricity of its **customers** in accordance with the Power Quality directive and subject to such quality criteria, standards and directives as the **NER** may from time to time prescribe.

## **SCHEDULES**

### **SCHEDULE 1 - PART 1**

#### **LICENCE AREA**

Within the national boundaries of the Republic of South Africa.

### **SCHEDULE 1 - PART 2**

#### **DEFINITION SECTION**

All words and expressions in the Transmission Licence shall bear the following meaning:

##### **Augmentation**

In relation to an electricity transmission system means, the process of maintaining or upgrading the operating capability of the electricity **transmission system** by replacing or enhancing existing plant and equipment or by adding plant and equipment.

##### **Ancillary services**

Services supplied to the Licensee by generators, distributors or end-use **customers**, necessary for the reliable and secure transport of power from generators to distributors and other customers.

##### **Customer**

A legal entity that contracts with the Licensee, for the provision of transmission services.

##### **Eskom**

Refers to Eskom Holdings Limited (Registered: 2002/015527/06) a Company registered in terms of the Company Laws of the Republic of South Africa, with its registered office at Megawatt Park, Maxwell Drive, Sandton.

##### **Grid Code**

The regulatory instrument approved by the NER and developed in consultation with electricity supply industry participants, which defines the technical and operational requirements for connecting to the interconnected power system and which consists of the following documents:

- Preamble
- Governance Code
- Network Code

- System Operation Code
- Metering Code
- Tariff Code
- Information Exchange Code

### **Grid Code Secretariat**

The entity responsible for the administrative functions as defined in the Governance Code of the **Grid Code**.

### **Interconnected power system**

A defined in the **Grid Code**

### **Market Rules**

The rules by which participants must abide when participating in the South African electricity market. These are the rules that must be accepted by market participants and must be approved by the **NER**.

### **National Electricity Regulator (NER)**

The legal entity established in terms of Section 2 of the Electricity Act (Act no. 41 of 1987 as amended), responsible for regulating the electricity supply industry in South Africa.

### **System Operator (SO)**

The entity within the Licensee's Transmission Division responsible for the control and operation of the interconnected power system, in accordance with the **Grid Code**.

### **Transmission Network Service-Provider (TNSP)**

The entity within the Licensee's Transmission Division, responsible for the control, maintenance and provision of all associated services for offering connection to users of the (IPS) / national electricity transmission network.

### **Transmission System (TS)**

Is defined in the South African electricity supply industry as consisting of all lines and substation equipment where the nominal voltage is above 132 **kV**. All other equipment operating at lower voltages are either part of the distribution system or classified as transmission transformation equipment.

### **Acronyms / Abbreviations**

|              |                                       |
|--------------|---------------------------------------|
| <b>kV</b>    | kilovolt                              |
| <b>NER:</b>  | National Electricity Regulator        |
| <b>TNSP:</b> | Transmission network service-provider |
| <b>TS:</b>   | Transmission system                   |
| <b>SO:</b>   | System Operator                       |
| <b>IPS:</b>  | Interconnected Power System           |

## **SCHEDULE 1 – PART 3: RULES FOR INTERPRETATION**

In this licence, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this licence;
- (b) words importing the singular include the plural and vice versa;
- (c) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- (d) a reference to a condition, clause, schedule or part is to a condition, clause, schedule or part of this licence;
- (e) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement;
- (f) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- (g) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (h) a period of time:
  - (1) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
  - (2) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (i) an event, which is required under this licence to occur on or by a stipulated day, which is not a business day, may occur on or by the next business day.

## **SCHEDULE 2**

### **TRANSMISSION PRICES AND TARIFFS**

(This schedule must contain an updated list of the tariffs applied by the Licensee, as approved by the **NER**, in accordance with the principles set out in the Tariff Code section of the Grid Code.)

## **SCHEDULE 3**

### **Transmission Business**

The Transmission Division of the Licensee (Eskom Holdings Ltd), comprises of the following undertakings (as stipulated below), which are identified for separate accounting treatment, namely:

1. The Network Service Provider;
2. The System Operator;
3. The Transmission System Planner;
4. The Grid Code Secretariat; and
5. The National Indicative Resource Planner

## **SCHEDULE 4**

### **Demarcation of Interconnected Power System**

The Licensee shall provide a list or schedule defining all the assets that constitute the IPS.

