



FREE MARKET FOUNDATION

PO Box 4056 | Cramerview 2060
011 884 0270 | gailday@fmfsa.org

**Free Market Foundation Submission on the
Electricity Regulation Act and National Energy Regulator Act**

To: Committee 1 (Triple Challenges of Inequality, Poverty and Unemployment)
High Level Panel on the Assessment of Key Legislation

By: Free Market Foundation

1. The Free Market Foundation

The Free Market Foundation (FMF) is an independent non-profit public benefit organisation founded in 1975 to promote and foster an open society, the rule of law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations and sponsorships.

2. Introduction

Solving the triple challenges of inequality, poverty and unemployment requires, as an essential part of the solution, a consistent and low cost supply of electricity. The fundamental control over the generation and sale of electricity is exercised in terms of the *Electricity Regulation Act, 2006: No. 4 of 2006* and the *National Energy Regulator Act, No. 40 of 2004*.

3. Exempt small electricity producers who wish to sell electricity to their immediate neighbours from the licensing requirements of the Electricity Regulation Act, 2006, which will substantially reduce the demands on the grid

A small electricity producer, such as a person living in a village that does not have an electricity supply from Eskom, or a resident in a town or city, is not allowed by law to sell electricity to her/his next door neighbour. According to Section 8(1): No person may, without a licence issued by the Regulator in accordance with this Act – (a) operate any generation, transmission or distribution facility; and (c) be involved in trading. (Schedule 2(2) of the Act exempts from the obligation to apply for and hold a licence “Any generation plant constructed and operated for own use.”

Legislation to protect Eskom from all competition was adopted by the apartheid government and that protection largely continues to this day at the expense of the general public. The Act should be changed to extend the exemption contained in Schedule 2(2) so as to make it possible for small electricity producers to sell electricity subject only to safety requirements, such as a requirement that the connections from the generating plant to the user or users should be carried out by a qualified electrician. Legislation should be written to benefit, above all, members of the general public and should not solely benefit particular providers of goods or services.

4. Learning from the experience of other countries

The FMF has for many years been involved in the discussions regarding the solution to South Africa's energy supply problem. Our research has revealed that the majority of countries that previously had government-owned utilities with monopolies over the generation and supply of electricity, such as Eskom, have to a greater or lesser extent relinquished their monopolies and allowed privately-owned

companies to take over all or part of the activities previously carried out by the government facilities. **Examples of changes introduced by some other countries:** (1) **New Zealand** has allowed competing private providers to deliver 100% of electricity to households; can boast of a 24 hour change from one domestic electricity provider to another; has established a market for electricity that results in an improved utilisation of available electricity and lower prices, and has competing private distribution infrastructure companies, and private and public generation companies (2) The **European Union** has opened up the market for electricity, bringing about increased competition, including competition across country borders, which led to a substantial reduction in prices when the market was first opened up, and has assisted in maintaining security of supply and in keeping prices low. (3) The **United Kingdom** sold off the entire state-owned electricity business (generation, transmission, distribution, and supply of electricity) to a large number of competing companies. The transmission grid was sold to a single purchaser, the National Grid Company, with its prices tightly controlled because of its monopoly status. Following the changes, it took 20 years for the price of electricity to double in the UK.

5 The role of an independent transmission grid in the functioning of an electricity market The high voltage transmission grids should be independent of the generation of electricity otherwise a market for electricity cannot function smoothly. If the transmission grid is owned and managed by the owner of generation plants there is a conflict of interest. A grid owner wishes to increase the volume of traffic on the grid while the owners of generation plants wish to limit competition from other generators of electricity. This conflict is plainly visible in the reluctance of Eskom to facilitate the access of Independent Power Producers to the grid. An effort was made to solve the problem with the ISMO Bill, which died somewhere in the processes, probably as a result of opposition from Eskom.

6. Electricity legislation and policy

In 1998 the government published a white paper that put forward policies to guide the development of electricity policy in the country, particularly towards establishing an electricity market in the SADEC region. The White Paper proposed the following reforms: (1) Giving customers the right to choose their electricity supplier (2) Introducing competition into the industry, especially the generating sector (3) Permitting open, non-discriminatory access to the transmission system (4) Encouraging private sector participation in the industry. These proposals were unfortunately not implemented. Had implementation of the proposals commenced soon after they were made, South Africa would not have suffered the harmful and costly load-shedding that set back the economy substantially.

7. Conclusion

Without a market in which competitors compete for the business of consumers it is impossible to know what the price of electricity should be. It is incongruous that the government should introduce harsh laws intended to ensure that there is price competition in the private sector for the protection of consumers yet maintains a state-owned monopoly electricity provider that is subject to no market constraints. With the best will in the world it is impossible for NERSA to know whether prices charged by Eskom are excessive and whether the electricity utility is, or is not, a huge burden on the country's citizens. The suggestion that small private producers of electricity be allowed to sell electricity to neighbouring users will provide some measure of control over the pricing policies of Eskom and the municipalities.