

**EXPLANATORY DOCUMENT FOR GOVERNMENT NOTICE NO. 779 PUBLISHED IN
GOVERNMENT GAZETTE NO. 40110 DATED 1 JULY 2016**

1.

The concern regarding who the competent authority is for environmental authorisation (EA) applications for renewable energy has been raised since 2011. The Minister of Environmental Affairs (the Minister), therefore published a notice on 1 July 2016 to clarify this matter. This explanatory document aims to clarify the EA applications that will be covered under the scope of this notice.

2.

In December 2009 at the United Nations Framework Convention on Climate Change (UNFCCC), the President, honourable Jacob Zuma, committed South Africa to take nationally appropriate Carbon Dioxide mitigation action to reduce emissions. This commitment was made in line with the Articles of the UNFCCC and is being implemented, among others, through the Department of Energy's (DoE) Integrated Resource Plan (IRP) 2010 – 2030. This commitment was reaffirmed in 2015, when South Africa submitted its Intended Nationally Determined Contribution (INDC) on climate change adaptation, mitigation, and finance and investment requirements in accordance to the UNFCCC and signed the Paris Agreement on 22 April 2016.

3.

In terms of section 24C(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Minister must be identified as the competent authority when the activity has implications for international environmental commitments or relations and where it is identified by the Minister by notice in the *Gazette*.

On 1 July 2016, the Minister therefore published Government Notice 779 in *Government Gazette* No. 40110 {Annexure A} to confirm that the Minister is the competent authority for activities which are identified as activities in terms of section 24(2)(a) of NEMA, which may not commence without an EA, and *which relates to the IRP* and any updates thereto.

4.

The implementation of the IRP requires the development and promulgation of a legal framework to promote non-Eskom generation, including the finalisation of the regulatory framework for the procurement of non-Eskom generated power. The DoE, in consultation with the National Energy Regulator of South Africa, has published determinations made under section 34(1) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) and/ or the Electricity Regulations on New Generation Capacity [(as per Government Notice. 399 in *Government Gazette* No. 34262 dated 04 May 2011) {Annexure B}] for the following IRP Programmes:

4.1 CSP, Wind, Solar Photovoltaic, Biogas, Biomass, Landfill Gas and Small Hydro

Renewable Energy Independent Power Producer (IPP) Procurement Programme [(published as Government Notice No. 733 in *Government Gazette* No. 39111 dated 18 August 2015) {Annexure C}]¹ for the following technologies:

- 4.1.1 Concentrating Solar Power (CSP)
- 4.1.2 Wind
- 4.1.3 Solar photovoltaic
- 4.1.4 Biogas
- 4.1.5 Biomass
- 4.1.6 Landfill gas
- 4.1.7 Small (≤ 40 MW) hydro).
- 4.1.8 Small projects² (≤ 5 MW based on any of the sources referred to in paragraphs 4.1.1 to 4.1.7 above).

4.2 Coal and Hydro Energy

Baseload IPP Procurement Programme [(published as Government Notice No. 1075 in *Government Gazette* No. 36005 dated 19 December 2012 {Annexure D}; as amended by Government Notice No. 732 in *Government Gazette* No. 39111 dated 18 August 2015) {Annexure E}] for the following technologies:

- 4.2.1 Coal
- 4.2.2 Hydro energy

¹ Government Notice No. 733 stipulates that "Notwithstanding that the IRP 2010-2030 does not refer to biogas, biomass, landfill gas and Small (≤ 40 MW) hydro); these technologies will also form part of the renewable energy IPP procurement programme". As such the Minister will be the competent authority for EA applications for these technologies.

² This includes any small scaled project, which procurement process has been determined under the Electricity Regulation Act, 2006 and / or the Electricity Regulations on New Generation Capacity (as well as any future determinations that may be made after 01 July 2016).

4.3 Gas

Gas IPP Procurement Programme (published as Government Notice No. 3732 in *Government Gazette* No. 39111 dated 18 August 2015) {Annexure E}] for the following technologies:

- Any gas type/ source (including natural gas delivered to the power generation facility by any method including by pipeline from a natural gas field or elsewhere or an Liquefied Natural Gas (LNG) based method; coal bed methane; synthesis gas or syngas; above or underground coal gasification; Shale Gas and any other gas type or source as may be considered appropriate by the procurer).

4.4 Waste Heat, Furnace off Gas, Cogeneration and Industrial Process, Agriculture or Forestry Co-Product, By-Product or Residual Product

Cogeneration IPP Procurement Programme [(published in Government Notice No. 731 in *Government Gazette* 39111 dated 18 August 2016) {Annexure F}] for the following technologies:

- 4.4.1 waste heat or furnace off gas
- 4.4.2 cogeneration (i.e. the simultaneous generation of electricity and useful thermal energy from a common fuel source)
- 4.4.3 an energy source which is a co-product, by product, waste product or residual product of an industrial process and or sustainable agricultural or forestry activity.

4.5 Nuclear



Nuclear energy [(“nuclear programme”) (published as Government Notice No. 1268 in *Government Gazette* 39541 dated 21 December 2015) {Annexure G}].

³ Government Notice No. 732 stipulates that “Notwithstanding that the IRP 2010-2030 appears to primarily contemplate LNG as the potential source of natural gas for power generation and indicated that other sources still require further research, the new generation capacity determined as necessary in paragraph (d) above, may be generated from any gas type or source (including natural gas delivered to the power generation facility by any method including pipeline from a natural gas field or elsewhere or an LNG based method; coal bed methane; synthesis gas or syngas; above or underground coal gasification; Shale Gas and any other gas type or source as may be considered appropriate by the procurer), and may be generated using any appropriate technology, notwithstanding that the IRP 2010 -2030 may not have contemplated such technology or have considered it viable”.

5.

In light of the above, it is imperative to clarify that the Minister is the competent authority for applications for EA for facilities or infrastructure, including its ancillary activities⁴, that will form part of the IRP Programmes for technologies whose procurement processes have been determined under the Electricity Regulation Act, 2006 and / or the Electricity Regulations on New Generation Capacity as detailed in paragraph 4 above, as well as any future determinations that may be made.

If the proponent will not, or does not intend to, participate in any of the IRP programmes, the competent authority will be the MEC responsible for environmental affairs in the respective province, unless —

- a. another sub-section of section 24C of NEMA specifies the Minister to be the competent authority, or
- b. the listed or specified activity is or is directly related to —
 -  prospecting or exploration of a mineral or petroleum resource; or
 -  extraction and primary processing of a mineral or petroleum resource;
 in which case the competent authority is the Minister responsible for mineral resources.

6.

The EA applications that will be dealt with by the Minister for the above-mentioned IRP Programmes include applications for:

- a) new power generation facilities, including ancillary activities;
- b) new power lines, including ancillary activities;
- c) new substations, including ancillary activities;
- d) expansion of existing power generation facilities;
- e) lengthening or expansion of existing power lines;
- f) expansion of existing substations;
- g) ancillary activities, directly related to existing power generation facilities;
- h) ancillary activities, directly related to existing substations;
- i) ancillary activities, directly related to existing power lines;

⁴ 'Ancillary activities' are those activities providing necessary support to the primary activity (power generation plant, substation or power line). In this regard a new substation may need a road, a fence, an ablution facility, a parking area, a bridge, power lines, substations etc.

- j) amendment of an existing EA that was granted by the Department of Environmental Affairs (DEA) or by any of the provincial environmental departments —

provided that such application related to the electricity generation facility, substation or power lines will form / forms / formed part of the IRP Programmes.

7.

Further to Government Notice 779:

- a. All EAs issued for activities related to the IRP 2010 – 2030 issued by the Minister or the MEC between 30 January 2010 until 1 July 2016 are regarded as valid and as having been made under agreement in terms of Section 24C(3)(a) of the NEMA.
- b. Such EAs [(as per paragraph 7(a)], issued by the MEC must be submitted to DEA since DEA, as from 01 July 2016, is the competent authority for compliance monitoring or enforcement or any amendments to such an EA.
- c. All pending applications (as on 1 July 2016) must be submitted to the DEA.

8.

Should clarity be required for a specific scenario in relation to the competent authority for an application for EA or an amendment to an EA, such can be directed to ig@environment.gov.za.

Frequently Asked Questions

| Frequently asked questions | Response |
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| 1. Who is the competent authority for compliance monitoring of EAs issued by a MEC? | All EAs for activities related to the IRP 2010 – 2030 issued by the Minister or the MEC between 30 January 2010 until 1 July 2016 are regarded as valid and as having been made under agreement in terms of Section 24C(3)(a) of the NEMA. Such EAs issued by the MEC must be submitted to DEA since DEA, as from 01 July 2016, is the competent authority for compliance monitoring of such an EA. |
| 2. Who is the competent authority for any enforcement action, where an IRP related activity has been unlawfully commenced with, without the required EA? | Such unlawful commencement of listed or specified activities, must be dealt with by the Minister, provided that it relates to the IRP 2010 – 2030 as explained in the explanatory document. |
| 3. Who is the competent authority for new applications in terms of Section 24G of NEMA for an IRP related activity? | Such an application, must be submitted to the Minister, provided that it relates to the IRP 2010 – 2030 as explained in the explanatory document. |
| 4. The Notice clarifies that all pending applications must be submitted to the DEA. Does this include application in terms of Section 24G of the NEMA? | All pending applications (as on 1 July 2016) for EA must be submitted to the DEA. This includes NEMA Section 24G applications. A section 24C(3) agreement can be used where appropriate [agreement that an application(s) for environmental authorisations may be dealt with by the MEC]. |

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| <p>5. Would the Minister also be the competent authority for the development of facilities or infrastructure for the distribution and transmission of electricity?</p> | <p>The EA applications that will be dealt with by the Minister for the IRP Programmes includes applications for:</p> <ul style="list-style-type: none"> a) new power generation facilities, including ancillary activities; b) new power lines, including ancillary activities; c) new substations, including ancillary activities; d) expansion of existing power generation facilities; e) lengthening or expansion of existing power lines; f) expansion of existing substations; g) ancillary activities, directly related to existing power generation facilities; h) ancillary activities, directly related to existing substations; i) ancillary activities, directly related to existing power lines; j) amendment of an existing EA that was granted by the Department of Environmental Affairs (DEA) or by any of the provincial environmental departments — <p>provided that such application related to the electricity generation facility, substation or power lines will form / forms / formed part of the IRP Programmes.</p> <p>Also see the answer to question 7 below providing a few examples.</p> |
| <p>6. What is an ‘ancillary activity’?</p> | <p>Ancillary activities’ are those activities providing necessary support to the primary activity (power generation plant, substation or power line). In this regard a new substation may need a road, a fence, an ablution facility, a parking area, a bridge, power lines, substations etc.</p> |

7. Who will be the competent authority in the event where an IRP-related activity will form part of a larger development?

It is possible that IRP related infrastructure or facilities may be developed with another development. Should clarity be required for a specific scenario in relation to the competent authority for an application for EA or an amendment to an EA, such can be directed to ig@environment.gov.za.

The following are only a few examples of many more possible scenarios:

Scenario 1: Power Generation Facility

A new renewable electricity generation facility and 3 power lines are to be developed for electricity supply to an existing platinum mine.

The relevant specified and / or listed activities are directly related to extraction and primary processing of a mineral or petroleum resource. In this regard the DMR would be the competent authority.

Scenario 2: Power Generation Facility

A new renewable electricity generation facility is to be developed for electricity supply to an existing metal factory. The proponent has indicated that he will not, or does not intend to, participate in any of the IRP programmes.

The relevant specified and / or listed activities are not directly related to extraction and primary processing of a mineral or petroleum resource or the extraction and primary processing of a mineral or petroleum resource. In this regard the DMR would not be the competent authority. As the proponent will not, or does not intend to, participate in any of the IRP programmes, the competent authority will be the MEC responsible for environmental affairs in the respective province, unless another sub-section of section 24C of NEMA specifies the Minister to be the competent authority (e.g. the applicant is a parastatal).

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| | <p>Scenario 3: Power Generation Facility A new renewable electricity generation facility is to be developed for electricity supply to an existing metal factory. The proponent has indicated that excess power generated will go into the National Grid and that in this regard she will, participate in one of the IRP programmes.</p> <p>As the proponent will participate in one of the IRP programmes, the competent authority will be the Minister.</p> <p>Scenario 4: Power Generation Facility A new renewable electricity generation facility is to be developed for electricity supply to an existing metal factory. The proponent has indicated that excess power generated may go into the National Grid and that in this regard she intends to, participate in one of the IRP programmes.</p> <p>As the proponent may potentially participate in one of the IRP programmes, the competent authority will be the Minister.</p> <p>Scenario 5: Road development A new road is to be developed to an existing renewable electricity generation facility of a mine.</p> <p>The relevant specified and / or listed activities are directly related to extraction and primary processing of a mineral or petroleum resource. In this regard the DMR would be the competent authority.</p> <p>Scenario 6: Road development A new road is to be developed to an existing renewable electricity generation facility. The proponent has indicated that the electricity generation facility does not form part of one of the IRP Programmes.</p> <p>As the facility does not form part of the IRP programmes, the competent authority for the application for the road development will be the MEC responsible for environmental affairs in the respective province, unless another sub-section of section 24C of NEMA specifies the Minister to be the competent authority (e.g. the development has a footprint that falls within the boundaries of more than one province).</p> |
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| | <p>Scenario 7: Road development</p> <p>A new road is to be developed to an existing renewable electricity generation facility. The proponent has indicated that the electricity generation facility forms part of one of the IRP Programmes.</p> <p>As the electricity generation facility forms part of the IRP programmes, the competent authority for the application for the road development will be the Minister.</p> <p>Scenario 8: Road development</p> <p>A new road is to be developed to an existing renewable electricity generation facility. The road would however also serve an existing guest house and 2 farms. The proponent has indicated that the electricity generation facility forms part of one of the IRP Programmes. The proponent (owner of electricity generation facility) will also develop and fund the road.</p> <p>Although the electricity generation facility forms part of the IRP programmes and the road would be developed and fully funded by the electricity generation facility, it would not be developed for purposes of the electricity generation facility only. In this regard the competent authority for the application for the road development will be the MEC responsible for environmental affairs in the respective province, unless another sub-section of section 24C of NEMA specifies the Minister to be the competent authority (e.g. the applicant is a national Department).</p> <p>Scenario 9: Development of a Power Generation Facility, new mine and a road.</p> <ul style="list-style-type: none"> ○ The electricity generation facility forms part of one of the IRP Programmes (a certain % of the generated electricity would go into the national grid whilst the remaining % would go directly to the mine). The facility includes power lines to the exiting National grid, road for electricity facility, parking area for electricity facility, bridge for electricity facility etc.,) ○ A 3 kilometre road would be developed. The road would serve the electricity generation facility, the new mine and an existing guest house. ○ 2 access road would be developed (one from the new road to the mine and 1 from the new road to the new electricity generation facility). |
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| | <p>a. The relevant specified and / or listed activities for the development of the electricity generation facility are not directly related to extraction and primary processing of a mineral or petroleum resource (although it will also provide electricity to the mine). In this regard this falls under the jurisdiction of the Minister and needs to be submitted to the DEA (this may include a number of listed and specified activities).</p> <p>b. The 3 kilometer road to be developed would serve the electricity generation facility, the new mine and an existing guest house. In this regard the road is neither directly related to extraction and primary processing of a mineral or petroleum resource, nor is it directly related to the electricity generation facility (as it serves a guest house, the mine and electricity generation facility). The proposed road would fall under the jurisdiction of the MEC and needs to be submitted to the Provincial Environmental Department, unless another sub-section of section 24C of NEMA specifies the Minister to be the competent authority.</p> <p>c. The access road to the mine is directly related to extraction and primary processing of a mineral or petroleum resource (will only serve the mine). In this regard the DMR would be the competent authority.</p> <p>d. The access road is an ancillary activity to the electricity generation facility. As the proponent will participate in one of the IRP programmes, the competent authority will be the Minister.</p> <p>Scenario 10: Development of a Power Generation Facility, new mine and a road.</p> <ul style="list-style-type: none"> o The electricity generation facility will not form part of one of the IRP Programmes. A certain % of the generated electricity would go to the Municipal power grid and the remaining % would go directly to the mine. The facility includes power lines, road for electricity facility, parking area for electricity facility, bridge for electricity facility etc., o A 3 kilometre road would be developed. The road would serve the electricity generation facility, the new mine and an existing guest house. o 2 access road would be developed (one from the new road to the mine and 1 from the new road to the new electricity generation facility). <p>a. The relevant specified and / or listed activities for the development of the electricity generation facility are not directly related to extraction and primary processing of a mineral or petroleum resource (although it will also provide electricity to the mine). As the proponent will not, or does not intend to, participate in any of</p> |
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| | <p>the IRP programmes, the competent authority will be the MEC responsible for environmental affairs in the respective province, unless another sub-section of section 24C of NEMA specifies the Minister to be the competent authority (e.g. the development will take place within a national proclaimed protected area). The access road is an ancillary activity to the electricity generation facility and must also be dealt with by the MEC (unless any of the exclusions under section 24C of NEMA applies).</p> <p>b. The 3 kilometer road to be developed would serve the electricity generation facility, the new mine and an existing guest house. In this regard the road is neither directly related to extraction and primary processing of a mineral or petroleum resource, nor is it directly related to the electricity generation facility (as it serves a guest house, the mine and electricity generation facility). The proposed road would fall under the jurisdiction of the MEC and needs to be submitted to the Provincial Environmental Department, unless another sub-section of section 24C of NEMA specifies the Minister to be the competent authority.</p> <p>c. The access road to the mine is directly related to extraction and primary processing of a mineral or petroleum resource (will only serve the mine). In this regard the DMR would be the competent authority.</p> |
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