

Can mines now generate their own power?

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Minister of Mineral Resources and Energy, Gwede Mantashe, created a flurry of headlines when he told the Investing in African Mining Indaba that mines could generate their own electricity. Several clients picked up the phone to our firm to ask: "is this true?".



Image source: Getty/Gallo

The relevant paragraph of the official written text of the minister's speech says: "Following concurrence by energy regulator, Nersa, we are in the process of gazetting a revised Schedule 2 of the Electricity Regulation Act; which will enable self-generation; and facilitate municipal generation options under "Distributed Generation". This will help close the energy gap caused by deteriorating Eskom plant performance. Depending on the circumstances, the generation plant may only require registration and not licensing".

The current regulatory context

The central piece of legislation regulating electricity in South Africa is the Electricity Regulation Act, 4 of 2006 (the ERA). Section 4 of the ERA grants the National Energy Regulator of South Africa (Nersa) various powers and duties in respect of the electricity regulation framework, including the consideration and issuance of generation, transmission, distribution and trading licences, and the regulation of tariffs.

Schedule 2 of the ERA sets out activities which are exempt from the obligation to apply for and hold a license. These activities must still be registered with Nersa. These activities currently are, in summary, the operation of a generation facility:

- of no more than 1MW that is connected to the national grid, where there is a single customer, no wheeling of electricity through the national grid and the Minister has not published a notice in the Gazette stating that the amount of megawatts allocated in the IRP for embedded generation of this nature has been reached;
- of no more than 1MW that is connected to the national grid, where there is a single customer, wheeling through the national grid and there is an allocation for that electricity in the IRP;
- of no more than 1MW that is not connected to the national grid, where the operation is solely to supply the owner of the generation facility in question or for consumption by a customer related to the generator or owner of the generation facility on the same property where the generation facility is located (this category currently seems the

most applicable to mines, except that mines would generally look to procure electricity generation capacity way in excess of 1MW, for example, some mining companies are looking to procure between 40 and 60MW of private generation capacity);

- for demonstration purposes only, where the electricity produced is not sold and the facility will be in operation for less than three years; and
- where the electricity is produced from a co-product, by-product, waste product or residual product of an underlying industrial process and where the operation is solely to supply the owner of the generation facility or for consumption by a customer related to the generator on the same property where the generation facility is located.

Section 34 of the ERA provides that the minister may determine that new generation capacity is needed, the types of energy sources to be used, to whom the electricity may be sold and the manner in which the electricity is to be procured, for example through a competitive tender process and whether or not involving the private sector.

The Electricity Regulations on New Generation Capacity were published in May 2011 (and amended in November 2016) apply to new generation capacity procured by organs of state only - so do not apply to self-generation by privately owned mines or industry.

The Integrated Resource Plan gazetted in October 2019 is South Africa's plan for the procurement of generation capacity up to 2030. The last such plan was the Integrated Resource Plan 2010 (IRP 2010) promulgated in March 2011, and such plans are intended to be updated every two years.

Section 10(2)(g) of the ERA allows the minister to grant deviations from the Integrated Resource Plan. In May 2019, Jeff Radebe, the previous minister of energy, wrote a letter to Nersa granting a deviation from the then extant IRP 2010-2030 for licensing the operation of generation facilities between one and 10MW. Now, the current Integrated Resource Plan does not cap the amount of distributed generation that may be produced up to 2022. From 2022 to 2030, it is capped at 500MW per year. Distributed generation in the current IRP refers specifically to projects between one and 10MW.

Can mining companies generate own power without licenses?

Currently:

- if mining companies wish to generate own power less than 1MW, then they will need to register with Nersa;
- if mining companies wish to generate own power greater than or equal to 1MW but less than 10MW, they can do so under the current IRP, but need to get licensed by Nersa;
- if mining companies wish to generate own power greater than or equal to 10MW, they will need a ministerial deviation from the IRP and to be licensed by Nersa. This could also be enabled through an amendment of schedule 2 of the ERA to exempt their intended generation facilities from the licensing requirement.

The minister has now said that together with Nersa, his department is in a process to gazette a revised schedule 2 of the ERA to enable self-generation and facilitate municipal generation options under Distributed Generation, as defined in the

current IRP. Miners and industry can derive some encouragement from the minister's comments but should examine the detail of any legislative amendment that comes into being as a consequence of his comments in order to be certain.

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