
2 LEGAL CONTEXT

2.1 National Environmental Management Act (No 107 of 1998)

The EIA for this proposed project will be conducted in terms of the EIA Regulations that were promulgated in terms of Section 24 (5) of the National Environmental Management Act (NEMA). The National Department of Environmental Affairs and Tourism (DEAT) is the competent authority responsible for issuing environmental authorisation for the proposed project.

2.1.1 Environmental Impact Assessment Regulations: 385 -387 of 21 April 2006

A full EIA is applicable to all projects likely to have significant environmental impacts due to their nature or extent, activities associated with potentially high levels of environmental degradation, or activities for which the impacts cannot be easily predicted.

In terms of Government Notice Regulation (GNR) 387, activity 1(l), a full Environmental Impact Assessment comprising both Scoping and Impact Assessment, is necessary for the proposed new 400 kV overhead power lines. This activity is listed as follows:

- *Activity 1(l): The transmission and distribution of above ground electricity with a capacity of 120 kilovolts or more.*

The following activities in accordance with Regulation GNR 386 are also included in the EIA application, to provide for supporting infrastructure associated with the proposed power lines construction:

- *Activity 1 (p): The temporary storage of hazardous waste;*
- *Activity 12: The transformation or removal of indigenous vegetation of three hectares or more, or of any size where the transformation or removal would occur within a critically endangered ecosystem listed in terms of section 52 of the National Environmental Management: Biodiversity Act, 2004 (Act No 10 of 2004);*
- *Activity 14: The construction of masts of any material of type and of any height, including those used for telecommunications, broadcasting and radio transmission, but excluding (a) masts of 15m and lower exclusively used by (i) radio amateurs; or (ii) for lighting purposes, (b) flagpoles; and (c) lightning conductor poles;*
- *Activity 15: The construction of a road that is wider than four metres or that has a reserve wider than six metres, excluding roads that fall within the ambit of another listed activity or which are access roads of less than 30 metres long;*
- *Activity 16 (b): The transformation of undeveloped, vacant or derelict land for residential, industrial or institutional use where such development does not constitute infill and where the total area to be transformed is bigger than one hectare; and*

- *Activity 23: The decommissioning of existing facilities or infrastructure, other than facilities or infrastructure that commenced under an environmental authorization issued in terms of the Environmental Impact Assessment Regulations 2006 made under section 24(5) of the Act and published in Government Notice No. R. 385 of 2006, for -. (a) electricity generation*

The NEMA can be regarded as the most important piece of general environmental legislation. It provides a framework for environmental law reform and covers three areas, namely:

- Land, planning and development;
- Natural and cultural resources, use and conservation; and
- Pollution control and waste management.

The law is based on the concept of sustainable development. The objective of the NEMA is to provide for co-operative environmental governance through a series of principles relating to:

- The procedures for state decision-making on the environment; and
- The institutions of state which make those decisions.

The NEMA principles serve as:

- A general framework for environmental planning;
- Guidelines according to which the state must exercise its environmental functions; and
- A guide to the interpretation of NEMA itself and of any other law relating to the environment.

2.1.2 What are the NEMA principles?

Some of the most important principles contained in NEMA are that:

- Environmental management must put people and their needs first;
- Development must be socially, environmentally and economically sustainable;
- There should be equal access to environmental resources, benefits and services to meet basic human needs;
- Government should promote public participation when making decisions about the environment;
- Communities must be given environmental education;
- Workers have the right to refuse to do work that is harmful to their health or to the environment;
- Decisions must be taken in an open and transparent manner and there must be access to information;

- The role of youth and women in environmental management must be recognised;
- The person or company who pollutes the environment must pay to clean it up;
- The environment is held in trust by the state for the benefit of all South Africans; and
- The utmost caution should be used when permission for new developments is granted.

2.1.3 Department of Environmental Affairs and Tourism Integrated Environmental Management Information Series

The Department of Environmental Affairs and Tourism (DEAT) Information Series of 2002 and 2006 comprise 23 information documents. The documents were drafted as sources of information about concepts and approaches to Integrated Environmental Management (IEM). The IEM is a key instrument of NEMA and provides the overarching framework for the integration of environmental assessment and management principles into environmental decision-making. The aim of the information series is to provide general guidance on techniques, tools and processes for environmental assessment and management.

2.2 Environmental Conservation Act (Act No 73 of 1989)

The Environment Conservation Act (ECA) is a law that relates specifically to the environment. Although most of this Act has been replaced by the NEMA there are still some important sections that remain in operation. These sections relate to:

- Protected natural environments;
- Littering;
- Special nature reserves;
- Waste management;
- Limited development areas;
- Regulations on noise, vibration and shock and
- Environmental impact assessment (EIA).

Perhaps the most important sections are the ones that deal with EIA. The government has made certain Regulations under the EIA sections so that anyone who wants to undertake a development (e.g. erect a hotel, or build a factory) must first put together a report about how the development will affect the environment. This report is then used by government to decide whether permission for the development will be granted, and whether there will be any limits placed on the development.

2.3 Additional Legal Requirements and Frameworks

2.3.1 White Paper on the Energy Policy of the Republic of South Africa – 1998

Development within the energy sector in South Africa is guided by the White Paper on the Energy Policy, published by DME in 1998. This White Paper sets out five objectives for the further development of the energy sector. The five objectives are as follows:

- Increased access to affordable energy services;
- Improved energy governance;
- Stimulating economic development;
- Managing energy-related environmental and health impacts; and
- Securing supply through diversity.

Furthermore, the Energy Policy identified the need to undertake an Integrated Energy Planning (IEP) process in order to achieve a balance between energy demand and resource availability, whilst taking into account health, safety and environmental aspects. In addition, the policy identified the need for the adoption of a National Integrated Resource Planning (NIRP) approach to provide a long-term cost-effective resource plan for meeting electricity demand, which is consistent with reliable electricity supply and environmental, social and economic policies.

2.3.2 Integrated Energy Plan (IEP) – 2003

DME commissioned the IEP to provide a framework in which specific energy policies, development decisions and energy supply trade-offs can be made on a project-by-project basis. The framework is intended to create a balance in providing low cost electricity for social and economic development, ensuring security of supply and minimizing the associated environmental impacts. The IEP projected that the additional demand in electricity would necessitate an increase in electricity generation capacity in South Africa by 2007. Furthermore, the IEP concluded that, based on energy resources available in South Africa, coal will be the primary fuel source for the current expansion period.

2.3.3 National Integrated Resource Plan (NIRP) – 2003/2004

In response to the White Paper's objective relating to affordable energy services, the National Electricity Regulator (now NERSA) commissioned a NIRP. The objectives of the NIRP are to determine the least-cost supply option for the country, provide information on the opportunities for investment into new power stations and evaluate the security of supply.

The national electricity demand forecast took a number of factors into account. They are:

- A 2.8% average annual economic growth;
- The development and expansion of a number of large energy-intensive industrial projects;
- Electrification needs;

- A reduction in electricity-intensive industries over the 20 year planning horizon;
- A reduction in electricity consumers – NIRP anticipates people switching to the direct use of natural gas;
- The supply of electricity to large mining and industrial projects in Namibia and Mozambique; and
- Typical demand profiles.

In addition to the ECA and NEMA, the following Acts have some bearing on the proposed activities:

2.3.4 The National Heritage Resources Act (No. 25 of 1999)

The proposed overhead power lines comprise certain activities (e.g. changing the nature of a site exceeding 5 000 m² and linear developments in excess of 300 m) that require authorisation in terms of Section 38 (1) of the Act. Section 38 (8) of the Act states that, if heritage considerations are taken into account as part of an application process undertaken in terms of the ECA, there is no need to undertake a separate application in terms of the National Heritage Resources Act. The requirements of the National Heritage Resources Act have thus been addressed as an element of the EIA process, specifically by the inclusion of a Heritage Assessment.

2.3.5 Expropriation Act (No. 63 of 1975)

Eskom has a policy of “willing buyer, willing seller”, and therefore endeavours to purchase land where ever possible or necessary. However, the State and State-owned-enterprises can acquire the rights to use or possess the requisite land through the Expropriation Act (No 63 of 1975). The Expropriation Act requires the determination of compensation based on the principle of market value (i.e. what would the value be in the event of both a willing buyer and a willing seller trading the land). There is a suite of additional legislation, which, in conjunction with the Expropriation Act, would be used to determine the compensation value.

2.3.6 Occupational Health and Safety Act (Act No 85 of 1993)

This Act makes provisions that address the health and safety of persons working at the proposed plant. The Act addresses amongst others the:

- Safety requirements for the operation of plant machinery;
- Protection of persons other than persons at work against hazards to health and safety, arising out of or in connection with the activities of persons at work;
- Establishment of an advisory council for occupational health and safety; and
- Provision for matters connected therewith.

The law states that any person undertaking upgrades or developments for use at work or on any premises shall ensure as far as is reasonably practicable that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health when properly used.