

# Quarterly energy market update – Q3 2024

ALERT | 30 October 2024



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### SOUTH AFRICA

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## Quarterly energy market update – Q3 2024

South Africa's energy sector is undergoing significant change, as both public and private sectors seek to find ways to balance energy security with the country's decarbonisation objectives. The CDH Quarterly Energy Market Update aims to highlight the material legal developments that are shaping the market, with the intention of distilling what is relevant for our clients and their businesses.

### **Update on the Integrated Resource Plan and first Integrated Energy Plan in the works**

#### **Integrated Resource Plan (IRP)**

Following the conclusion of the extended commenting period on the draft Integrated Resource Plan 2023 (Draft IRP2023) on 23 March 2024, there have been few reported updates on expected timing for publication of the revised IRP.

However, a presentation by the Department of Mineral Resources and Energy to Parliament's Portfolio Committee on Energy and Electricity in August 2024 (DMRE Presentation) provides some insight into the process to date and the expected timelines going forward.

#### **According to the DMRE Presentation:**

- over 4,338 comments were submitted during the public consultation process, with 136 being substantive;
- the Minister of Electricity and Energy (Minister) is preparing to engage stakeholders to provide feedback on comments received during the consultation process; and
- the IRP model continues to be developed and tested, including the incorporation of transmission detail.

While the intention appears to be to finalise the process by November 2024, it is unclear whether this is still feasible. Speaking at the Windaba Conference on 4 October 2024, the Minister indicated that while a further public consultation process would not be undertaken, stakeholders are being engaged on issues and concerns raised to date.

See [here](#) for our overview of the Draft IRP2023.

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### Integrated Energy Plan

Despite the National Energy Act 34 of 2008 (Energy Act) having been signed into law in November 2008, the chapter regulating integrated energy planning only commenced in April of this year. In terms of the relevant provisions, the Minister is obligated to develop, review and publish an Integrated Energy Plan (IEP) on an annual basis.

The overdue IEP must deal with issues relating to the supply, transformation, transport, storage and demand for energy in a way that accounts for *inter alia* security of supply, affordability, economically available energy resources, the environment and social equity – all factors that have become critical to the country's energy planning landscape. The IEP must further inform and be informed by plans from all supply, production and demand sectors whose plans are impacted by the IEP, which includes the IRP.

Fragmented, misaligned and siloed planning across the sector has long been attributed to the lack of a holistic policy framework. The DMRE Presentation suggests that some tangible progress is being made, with set IEP development implementation phases and associated timeframes. According to the DMRE Presentation, the sector can anticipate a draft IEP by the end of the 2024/2025 financial year (FY), with consultations to take place during Q1 of the 2025/2026 FY and the final plan

to be published by the end of Q2 of the 2025/2026 FY. The timelines are currently merely indicative and, considering its strategic importance, it is likely that more time will be required to finalise the IEP following the conclusion of the consultation process.

As noted in a previous alert on the IEP (see [here](#)):

*“The IEP, when finalised, will serve as a blueprint for potential investors and Government. Investors will be able to direct resources and model their projects efficiently and effectively, so as to ensure long-term sustainable investment to meet South Africa's energy requirements as set out in the IEP. From a Government perspective, the Minister has been assigned an important task, one which has the potential to produce a plan focused on ensuring long-term energy security and alleviating energy poverty, while simultaneously promoting economic growth. However, in order for the IEP to succeed, all other ministerial heads across the various economic sectors would need to actively participate in not only the finalisation of the IEP, but also the implementation thereof.”*

### The Electricity Regulation Amendment Act signed into law, but commencement stalled

The Electricity Regulation Amendment Act 38 of 2024 (ERAA), which aims to reform the electricity market, was signed into law by President Ramaphosa on 16 August 2024. The ERAA has, however, yet to commence, with an effective date still to be proclaimed by the President in the *Government Gazette*.



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The amendments under the ERAA contemplate *inter alia* replacing South Africa's vertically integrated electricity market with a competitive multi-market system, which is defined as a hybrid market model designed to accommodate various defined transactions (market transactions, physical bilateral transactions and regulated transactions).

Reports indicate that the delay may be attributable to provisions of the ERAA that could, once enacted, detrimentally impact municipal revenue streams stemming from electricity sales. With threats of potential court action, it is understood that attempts are being made to resolve the issue amicably before the ERAA commences.

### **NERSA reaches decision on Eskom's grid capacity reservation/preservation application**

On 3 August 2024, the National Energy Regulator of South Africa (NERSA) refused Eskom's application to reserve and/or preserve grid connection capacity in favour of any project procured in terms of a ministerial determination published under section 34 of the Electricity Regulation Act 4 of 2006 (ERA).

In reaching its decision, NERSA found that Eskom had failed to objectively justify discriminating between public and private market energy projects in respect of access to grid capacity, highlighting that Eskom did not identify the specific customers or classes of customers that would be disadvantaged by the proposed policy.

For more on this the application, see our previous alert [here](#). For further details on NERSA's refusal decision, refer to our alert [here](#).

### **NERSA's decision on Eskom's curtailment application pending**

In terms of a consultation paper released by NERSA on 5 July 2024, Eskom applied to NERSA on 24 May 2024 requesting approval for congestion curtailment to be treated as a constrained generation ancillary service for renewable energy resources (Curtailment Application). Per the consultation paper, "*leveraging the intermittent nature of renewable energy resources, it becomes possible to connect more resources to the grid without exceeding the capacity of the grid for most of the time.*"

A public consultation meeting was held on 22 August 2024, with NERSA's decision on the Curtailment Application still pending as at the date of this publication.

Even prior to the release of the Curtailment Application, industry has long grappled with the potential implications of the use of congestion curtailment as a mechanism to open and optimise grid capacity, raising concerns in respect of uncertainty around timing, scope, transparency and compensation.

For more on the details of the Curtailment Application and its potential impacts, see our separate alert [here](#).



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### **NERSA publishes draft wheeling rules for public comment**

On 9 August 2024, NERSA published a consultation paper setting out regulatory rules on network charges for third-party wheeling of energy (Draft Wheeling Rules).

The Draft Wheeling Rules are intended to account for and provide clarity on new transmission and distribution use of system charges for generators and loads, grid access procedures and the applicable contractual framework.

With the overarching objectives of *inter alia* transparency, fairness and standardisation, the Draft Wheeling Rules provide for the following:

- contractual arrangements for different wheeling scenarios based on the generator's point of connection;
- general principles of third-party wheeling;
- conditions to allow third-party wheeling;
- tariff unbundling;
- network service provider responsibilities; and
- rights of access to the grid.

The Draft Wheeling Rules were open for public comment until 8 September 2024, with NERSA's decision thereon anticipated on 8 November 2024.

### **Proposed amendments to Carbon Offset Regulations**

In line with the 2024 Budget Speech, National Treasury released draft regulations on 1 August 2024, which propose to amend the Carbon Offset Regulations to increase the threshold for eligible renewable energy projects from 15 MW to 30 MW for the carbon offset allowance.

In terms of the Carbon Tax Act 15 of 2019 and Carbon Offset Regulations, operating entities are entitled to claim a carbon offset allowance of up to 10% of their total greenhouse gas emissions to reduce their carbon tax liability.

According to the explanatory memorandum released by National Treasury, the proposed amendment seeks to encourage additional embedded generation and utility scale investments in renewable energy, and will contribute towards meeting South Africa's climate commitments.

### **Minister withdraws new nuclear power procurement determination**

Following a public announcement on 16 August 2024, the Minister formally withdrew his determination of January 2024 under section 34 of the ERA for the procurement of 2,500 MW of new nuclear energy generation (Section 34 Nuclear Determination), as contemplated in the Integrated Resource Plan 2019 (IRP 2019).



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As per our Quarterly Energy Alert for Q1 2024, available [here](#), the Democratic Alliance had instituted legal proceedings in the High Court of South Africa in March 2024 to challenge the lawfulness of the Section 34 Nuclear Determination on the basis of *inter alia* procedural unfairness. According to reports, the matter was set down for hearing in October 2024, before the Minister made his announcement of the withdrawal in August.

With the IRP2019 now significantly dated and stakeholder discussions on the revised Draft IRP2023 underway, the withdrawal decision aligns with Government's approach to explore different energy mix pathways, including and excluding nuclear, for the period of 2032–2050 (Horizon 2 under the Draft IRP2023 – see [here](#) for more detail) to best achieve decarbonisation targets without compromising security of supply.

### Climate Change Act signed into law

More than six years after it was first released for public comment, the Climate Change Act 22 of 2024 (Climate Change Act) was signed into law by President Ramaphosa on 23 July 2024, although it is yet to come into operation.

The purpose of the Climate Change Act is to enable the development of an effective climate change response and a long-term, just transition to a low-carbon and climate resilient economy and society for South Africa in the context of sustainable development.

The Climate Change Act provides for various regulatory mechanisms by which South Africa will seek to achieve the commitments made in its nationally determined contribution under the Paris Agreement, including sectoral emission targets and carbon budgets.

See [here](#) for our more detailed discussion in the *Legal Industry Reviews* on the potential misalignment between the ambitions of the Climate Change Act and South Africa's energy sector planning.

### Solar panel 10% import duty introduced (and unchallenged)

On 28 June 2024, the Minister of Finance published a notice in the *Government Gazette* amending Part 1 of Schedule 1 of the Customs and Excise Act 91 of 1964 to introduce a new 10% customs duty on photovoltaic cells assumed in modules or made up into panels.



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An import duty and rebate on solar panels was first proposed in August 2023, following the International Trade Administration Commission (ITAC)'s receipt of an application by a local solar panel manufacturer. ITAC published a notice in the *Government Gazette*, inviting public comment and providing that the reason for the application included:

*"The need to consider, in light of the development of a South African Renewable Energy Masterplan, which seeks, in part, to advance strategic localisation, whether a rebate provision is necessary to assist with local renewable energy manufacturing".*

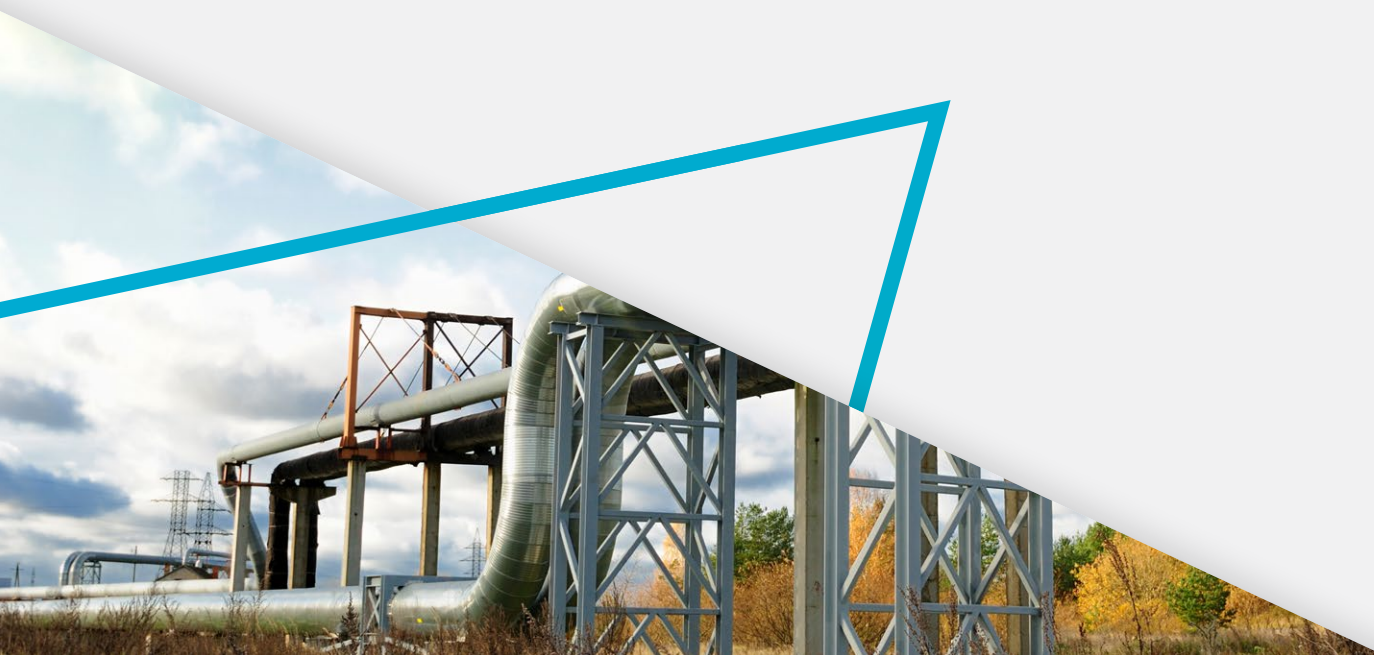
Concern has been expressed by industry bodies over the failure to formally engage with stakeholders following the public participation process. With the duty becoming effective overnight without notice, stakeholders grappled to understand the implications on current pricing and projects that have reached financial close.

Despite these concerns, there have been no reports of any legal challenges brought against the implementation of the tariff.

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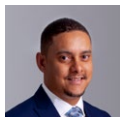
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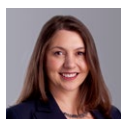
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