



# **NERSA RULES FOR LICENSABLE DISTRIBUTION AREAS OF SUPPLY**

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## 1. DEFINITIONS

Any term not defined in these Rules shall have the meanings assigned to them in the Electricity Regulation Act, as amended from time to time, and the Codes approved by NERSA. In the event of conflicting definitions, the definitions contained in the Electricity Regulation Act shall take precedence.

**Brown field** means an area that is outside of a licensed area of supply (AoS) that is currently reticulated with existing electrical infrastructure from a licensed authority with stand-alone customer(s) that can be rezoned and/or proclaimed allowing for densification of points of supply in such a way that it can then be deemed as a licensable AoS.

**Customer** means a person who purchases electricity or a service relating to the supply of electricity.

**Distribution** means the conveyance of electricity through a distribution system excluding trading. 'Distribute' and 'distributing' have corresponding meanings.

**Distribution licence** means the permission granted by NERSA to operate electricity in terms of the Electricity Regulation Act, 2006 (Act No.4 of 2006).

**Distributor** means a person licensed by NERSA to distribute electricity.

**End-user** means a user of electricity or a service relating to the supply of electricity.

**Eskom** means Eskom Holdings SOC Ltd, Reg. No.2002/015527/30, a state owned company incorporated in terms of Eskom Conversion Act, 2001 (Act No. 13 of 2001) and mandated to distribute electricity;

**Green field** means an area that is outside of an existing licensed area of supply (AoS) that has never had any electrical connection, has potential for development and/or potential to be rezoned and/or proclaimed to require electricity connection(s);

**Licensed area of supply** means the NERSA-approved area of supply referred to in Schedule 1 of an electricity distribution licence issued by NERSA.

**Licensable area of supply** means a specific area, Green field or Brown field that is eligible for licensing by NERSA.

- Licensee** means the holder of a licence granted or deemed to have been granted by the Regulator under the Electricity Regulation Act, 2006 (Act No.4 of 2006). In this case, a Distributor, and both will be used interchangeably.
- Municipality** means a category of municipality that has executive authority over, and the right to administer, reticulation of electricity within its area of jurisdiction.
- National Energy Regulator of South Africa (NERSA)** means the regulatory authority established in terms of the National Energy Regulator Act, 2004 (Act No. 40 of 2004), or its legal successor.
- Network** means the electrical infrastructure over which electrical energy is delivered.
- Reseller** means a registered person by NERSA who purchases electricity from a distribution licensee in order to sell such electricity to a customer of that licensee, as contemplated in the Licensing Exemption and Registration Notice No. 402 of 26 March 2020, as amended or substituted from time to time.
- Stand-alone customer** means a customer or an end-user that does not fall within a licensed or licensable area of supply but is connected to the distribution network of a distributor through its High Voltage (HV), Medium Voltage (MV) or Low Voltage (LV) network, and has an individual metered point of supply (PoS).

## **2. ACRONYMS AND ABBREVIATIONS**

AoS	Area of supply
DMRE	Department of Mineral Resources and Energy
GIS	Geographical Information System
HV	High Voltage
INEP	Integrated National Electrification Programme
IDP	Integrated Development Plan
LV	Low Voltage
MV	Medium Voltage
NERSA	National Energy Regulator of South Africa
PoD	Point of delivery
PoS	Point of supply

### **3. INTRODUCTION**

The South African Electricity Distribution Industry comprises mostly the National Energy Regulator of South Africa's (NERSA) licensed municipalities, Eskom and private distributors that are involved in the supply of electricity to customers and end-users. These current and prospective customers and end-users are situated within a wall-to-wall municipal demarcated area determined by the Demarcation Board in terms of the Municipal Demarcation Act, 1998 (Act No. 27 of 1998). The Constitution of the Republic of South Africa has vested executive authority in respect of electricity reticulation to local government and also recognised the existence of other spheres of government.

The Rules for Licensable Distribution Areas of Supply 'the Rules' recognise various spheres of national legislation that compliment the regulation of the industry and management of the operations on such entities to which the laws are applicable. The Rules further distinguish electricity regulation through licensing in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) ('the Electricity Regulations Act') and determination of municipal boundaries in terms of the Municipal Demarcation Act, 1998 (Act No. 27 of 1998). No conflict exists in the application and enforcement of the two legislations. Eskom as an organ of state, as defined in the Constitution of the Republic of South Africa and enabled to supply electricity in terms of Eskom Conversion Act, 2001 (Act No. 13 of 2001), is able to hold a distribution licence and to supply electricity to its customers.

These Rules are not aimed at formulating an opinion on the powers of either local government or Eskom with regard to the interpretation or application of section 156 of the Constitution of the Republic of South Africa, but are aimed at providing a framework on the determination of licensable area and licensing as such in terms of the Electricity Regulation Act.

The industry has evolved over the years and electricity service delivery has come to the forefront of economic and social growth. To enable development and promote a level playing field for all distributors, NERSA has consulted stakeholders and developed Rules on how future areas of supply would be licensed, which shall not apply retrospectively.

The Rules for Licensable Distribution Areas of Supply were developed to advance the powers and duties of NERSA as contemplated in section 4(b), (c), (d) and (g) of the Electricity Regulation Act. The granting of distribution licences for the operation of distribution facilities, as per section 4(a) of the Electricity Regulation Act, preceded the development of these Rules and does not apply to licensed areas of supply already approved by NERSA.

The Rules contain the requirements and criteria for licensing of the licensable area(s) of supply, including an area that is about to be electrified through any means, e.g. the Department of Mineral Resources and Energy's Integrated National Electrification Programme (INEP) funding. The Rules shall apply to all distribution licensees intending to apply for the inclusion of a licensable area of supply in its licence.

#### **4. NERSA MANDATE**

- 4.1 NERSA was established in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) ('the National Energy Regulator Act') to undertake the functions set out in section 4 of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) ('the Electricity Regulation Act').
- 4.2 One of the objectives of the Electricity Regulation Act is to ensure efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure within South Africa. The objectives are best achieved through licensing, the determination of tariffs and the development of rules, codes and guidelines.
- 4.3 In terms of the Electricity Regulation Act, no person may, without a licence issued by NERSA, operate any distribution facility. In consideration of the developmental and the discretionary powers that NERSA has with regard to making guidelines and publishing codes of conduct and practice, these regulatory Rules serve to provide a framework for the inclusion of a licensable area of supply into Schedule 1 of an Electricity Distribution Licence.

#### **5. OBJECTIVES OF THE RULES**

- 5.1 The objectives of the Rules are to set the regulatory requirements to be followed by all licensed Distributors and to set the criteria to be considered by NERSA when determining the incorporation of a new area of supply into an Electricity Distribution Licence, Schedule 1 (List of Areas of Supply). These shall be based on the qualifying principles, legal, financial, economical and technical requirements.



## **6. COOPERATION AMONGST LICENSEES**

### **6.1 Network and Capacity Planning**

6.1.1 All distribution licensees shall compile network development plans, as contemplated in section 7.1 of the Distribution Code, detailing network and capacity planning, development and investments relevant to future licensable areas of supply.

6.1.2 Where a licensee (i.e. licensed municipality or licensed private distributor) is a customer of another licensee (i.e. Eskom), the licensed municipality shall ensure that the following are shared with Eskom to integrate it into its network and capacity planning relevant to green fields, brown fields and future Stand-Alone customers, which are:

6.1.2.1 Integrated Development Plan (IDP);

6.1.2.2 System performance statistics;

6.1.2.3 10-year load forecast at its incoming point of supply (PoS) or point of delivery (PoD); and

6.1.2.4 Network Development Plans with minimum window period of five years.

6.1.3 Subsequent to the provision of the above-mentioned information to Eskom, Eskom's network development plans must be shared or made available to the licensed municipality, which is its customer, on request.

### **6.2 Referral to the Appropriate Licensee**

6.2.1 Where it is evident and practically feasible that another distribution licensee is demonstrably best placed to supply a new area of supply, a reseller or a stand-alone customer (not yet connected), the licensees shall cooperate to ensure the best solution from a country perspective.

6.2.2 Where competing distribution licensees are of the view that both licensees are equally placed to supply a new area and are unable to agree, either licensee may lodge an application to NERSA.

### **6.3 Communication between Licensees**

6.3.1 In order to ensure the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure within a municipal boundary, in line with section 2(a) of the Electricity Regulation Act, licensees shall cooperate regarding new network planning (as contemplated in section 6.1 above), network construction, new electrification projects, and licensable areas of supply and stand-alone customers. These communications and sharing of information can be in the form of council resolution, IDP documents and letters of notification.

6.3.2 Where competing distribution licensees are of the view that this section is not adhered to by any of the licensees and the conduct of such licensee violates the regulatory determination in as far as licensing is concerned, a complaint may be referred to NERSA for resolution. NERSA may require proof of communication to ascertain adherence to this section.

### **6.4 Supply Area Edge**

6.4.1 Supply area edge refers to the increase of an area of supply through additional or new erven/stands in an existing rezoned and proclaimed area of supply or addition of new properties in an area with same name requiring electricity connection. The additional erven/stands/properties should be within same rezoned area, proclaimed name or common name. The following shall apply:

- a) The licensee shall inform NERSA in writing of the changes in the already licensed area of supply polygon for update on NERSA GIS.
- b) NERSA shall conduct an inspection in loco to confirm the increase in the area of supply and identification of the delineation of the area of supply.
- c) NERSA shall provide the licensee with an approved updated polygon of same area of supply, as updated on NERSA GIS.
- d) Expansion or planned expansion of a licensed area of supply shall not advance beyond any form of delineation, e.g. road, river, servitude and railway line, into another licensee's area of electricity supply.

## **6.5 Agreements between Licensees Supplying the Same Geographic Area**

6.5.1 NERSA acknowledges the legacy of the past where the same geographic area or same proclaimed area or same zoned area has two or more licensees and there is no clear delineation e.g. road, river, servitude and railway line. These legacy situations have been mapped and highlighted on NERSA GIS, and NERSA endeavours to avoid such in its licensing mandate.

6.5.2 Where there is no clear delineation, for purpose of creating a clear delineation, adjacent licensees supplying within the same geographic area shall engage and agree that one licensee should supply the said area or portion of the said area. Any transfer or handover of the existing assets shall be on a fair and reasonable cost in line with all National Treasury requirements.

6.5.3 NERSA will require a letter of support or consent letter duly authorised by executive or municipal council resolution when processing such transfer or handover applications, in accordance with the Electricity Distribution Licensing Procedure.

6.5.4 NERSA shall approve such agreement reached by those licensees, thereafter the due licensing process shall follow to ensure that the area(s) or customer(s) agreed upon is/are included in the areas of supply for the receiving licensee. However, where an agreement is not reached by those licensees, either licensee may refer the matter to NERSA.

## **6.6 DMRE INEP-Funded Electrification Licensing**

6.6.1 The licensees shall, on an annual basis (at time specified by the DMRE), submit the intended electrification plan to the DMRE. Once the projects are gazetted and contracted, the implementing licensee shall send an application with project (area) names to NERSA, as per its licence condition for licensing (Schedule 1 amendment), or NERSA shall obtain the new electrification projects and plans

from the DMRE for consideration of inclusion into the licensee's area of electricity supply. See flow chart 1 in Appendix B.

6.6.2 In case of priority projects (i.e. special ministerial projects) or electrification projects funded by any state organ or any government department, on an urgent basis, an application must be forwarded to NERSA prior to or within 14 days of commencement of the project.

## **6.7 Connection of New Stand-Alone Customer(s)**

6.7.1 Where a new stand-alone customer requires a connection within an area that has not been licensed, any distributor may connect the customer subject to section 6.3.1 and having regard of principle of section 8.1. The decision to connect a stand-alone customer shall depend on the proximity and technical ability to make such a connection. Connecting a customer does not reserve or create any right to a future licensable area of supply.

6.7.2 Where competing distribution licensees are of the view that both licensees are equally placed to supply a new stand-alone customer (not yet connected) and a dispute arises between the licensees, such dispute may be referred to NERSA for resolution – based on economic, technical and safety factors – to avoid traversing licensees' networks.

## **6.8 Connection of Electricity Resellers**

6.8.1 Licensees must ensure that resellers, as contemplated in the Licensing Exemption and Registration Notice No. 402 of 26 March 2020, as amended or substituted from time to time, are registered with NERSA having concluded an agreement with a licensee and the area to be reticulated by the reseller has been licensed in terms of these Rules.

6.8.2 Should a reseller be in a form of a stand-alone customer and competing distribution licensees are of the view that both licensees are equally placed to supply a new reseller (not yet connected or contracted) and a dispute arises

between the licensees, such dispute may be referred to NERSA for resolution – based on economic, technical and safety factors – to avoid traversing licensees' networks.

## **6.9 Exclusions from being a Licensable Area of Supply**

6.9.1 Stand-alone customers are not regarded as a licensable area of supply.

6.9.2 In-fills or edge increase to a licensed area of supply are deemed to be already licensed.

6.9.3 Off-grid own use customers are excluded from being a licensable area of supply.

## **7. APPLICATION REQUIREMENTS**

7.1 An application for an area to be licensed, i.e. an area of supply to be included in Schedule 1 of an electricity distribution licence, must be lodged with NERSA in terms of sections 4, 8, 16, and 17 of the Electricity Regulation Act and in accordance with the NERSA-approved Electricity Distribution Licensing Procedure and/or flow chart 1. The Electricity Distribution Licensing Procedure and relevant forms can be downloaded from NERSA's website at [www.nersa.org.za](http://www.nersa.org.za) or the applicant can email or fax a written application letter to NERSA.

7.2 NERSA shall finalise an application for a licensable area within 120 days from date of receipt, in accordance with section 13 of the Electricity Regulation Act.

## **8. CRITERIA FOR DECIDING ON THE INCLUSION OF AN AREA OF SUPPLY**

NERSA shall consider, among others, the following criteria when assessing an application:

- a) Evidence that there has been an engagement or reasonable attempts to engage in a discussion between licensees operating within a common geographic area.
- b) There has been effective network development planning based on accurate load forecasting models.

- c) Demonstrate the least life cycle cost requirement, considering cost to the licensee.
- d) Adequacy of the application with the provision of relevant and other additional information NERSA may request to support the application.
- e) Demonstrate that the principles of cooperation amongst licensees, section 6 above, have been adhered to.
- f) The application must be accompanied by proof of budget approval for such area to be electrified (i.e. INEP or any granted funding).
- g) Demonstrate safe network operating and maintenance including, but not limited to:
  - i. clear and identifiable delineation between the intended supply area and adjacent supply area(s) serviced by other licensee(s);
  - ii. no overlapping of supply area(s) (GIS polygons to confirm); and
  - iii. no crossing of existing Medium Voltage (MV)/Low Voltage (LV) line(s) or cables.

## **9. PROHIBITED ACTIVITIES RELATING TO AREAS OF SUPPLY**

The following activities are prohibited:

- a) Licensees supplying the same area or customers within another licensee's area of supply except for legacy cases, GIS polygons shall confirm.
- b) A licensee electrifying end-users and/or customers within an area that is eligible for licensing simply to pre-book that area.
- c) A licensee lodging a dispute on an unlicensed electrified area after the supply area is energised (i.e. a dispute must be lodged before the electrification project commences).
- d) A licensee supplying an area that qualifies as a licensable area without NERSA's approval.
- e) Electrification of municipal rezoned area(s) (i.e. an area with other municipal installed services e.g. roads and water infrastructure) done without invitation by a local or metropolitan municipality (IDP letter required).
- f) Licensees giving potential customers, existing customers or stand-alone customer exclusive supplier conditions for provision of electricity supply.

## **10. OBJECTIONS RELATING TO LICENSABLE AREA OF SUPPLY**

10.1 Two types of objections may be lodged with NERSA during consideration of an application:

- a) Objections on interest.
- b) Objections to right to supply.

10.2 Objections to an application by another licensee on the right to supply by the applicant, shall first be referred to the applicant to negotiate and reach consensus with the objecting licensee.

10.3 The DMRE shall be involved in an objection or dispute that pertains to INEP-funded electrification, but shall not be allowed to make the final ruling or decision on which licensee owns the area electrified through INEP funding.

10.4 Should the negotiations between the applicant and objecting licensee reach a deadlock, the parties shall agree that NERSA should mediate.

10.5 If after mediation the parties still do not agree, the matter shall be referred to NERSA for arbitration. The parties shall agree on the terms of reference where NERSA's decision shall be final. NERSA shall consider the following:

- a) The licensee's willingness and financial ability to supply end-users at the least possible cost.
- b) The closest electricity network (i.e. self-funded or DMRE-funded infrastructure) to the area of concern.
- c) Licensee's capacity to electrify the concerned area.
- d) Equitable growth of licensees operating within the municipal jurisdiction.
- e) Prior network investment, i.e. network, capacity and other related investments, for a new, current and projected demand of an area of supply, existing network assets and all possible related costs.

10.6 The above-mentioned arbitration process may also lead to NERSA calling for a public hearing for all parties to present to the Energy Regulator to make a decision.

## **11. CONCLUSION**

11.1 These regulatory Rules shall be revised from time to time to accommodate the lessons learnt from their implementation and/or from lessons learnt from the area of supply disputes between licensees.

11.2 These regulatory Rules shall be revised after the promulgation of the relevant licensing Regulations made under the Electricity Regulation Act or when any other relevant legislation changes.



## APPENDIX A

### Legislation, Standards, Codes and NERSA Documents

The Rules for Licensable Distribution Areas of Supply shall be read in conjunction with Acts, Regulations, Codes and other NERSA-approved documents listed in the table below.

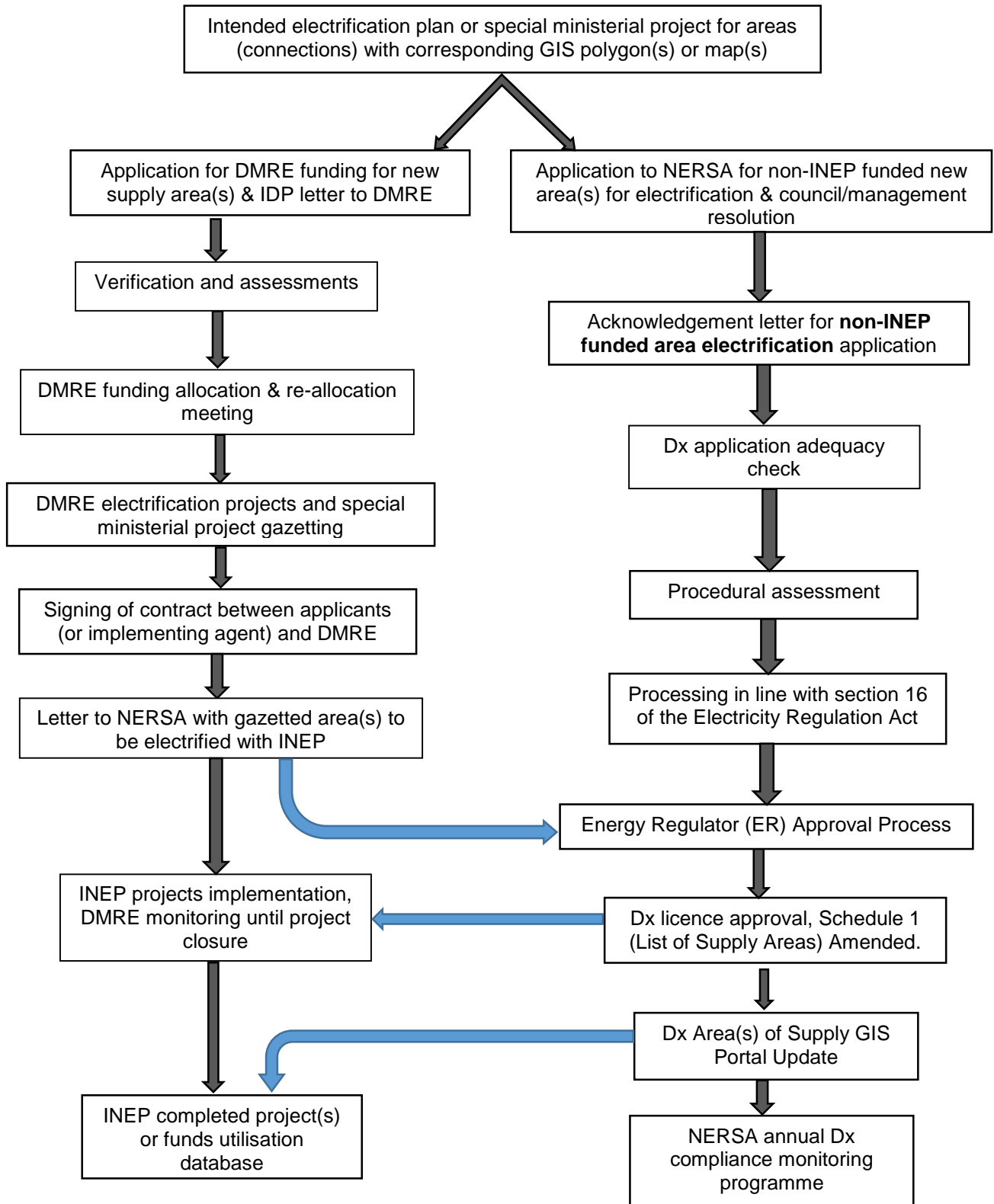
<b>Legislation, Codes, Procedures and Standard</b>
1. National Energy Regulator Act, 2004 (Act No. 4 of 2004)
2. Electricity Regulation Act, 2006 (Act No. 4 of 2006)
3. Division of Revenue Act, 2016 (Act No. 3 of 2016)
4. Municipal Systems Act, 2000 (Act No. 32 of 2000)
5. Licensing Exemption and Registration Notice No. 402 of 26 March 2020
6. South African Distribution Code Version 6.0
7. NERSA Distribution Licensing Procedure
8. NERSA Complaint and Dispute Resolution Procedure
9. NERSA Area of Supply Geographic Information System (GIS)

## **APPENDIX B**

### **Department of Mineral Resources and Energy INEP-Funded Projects Licensing**

- a) The licensee's intended electrification plan(s), which must include IDP letters from the individual municipalities for each and every project on the list, shall be sent to the Department of Mineral Resources and Energy (DMRE).
- b) A geographic map or surveyor general (SG) plan with corresponding Geographic Information System (GIS) polygon indicating the listed electrification projects (i.e. area intended to be electrified) including project capacity demand forecasting or three years' growth, must be submitted.
- c) DMRE shall share with NERSA a list of Schedule 5B projects to be undertaken once the DMRE has reached an agreement with the municipality. The submission may include a map or SG plan or GIS area polygon (as mentioned above) and the signed agreement if available.
- d) For special ministerial projects, the licensee must submit the project, a map or SG plan or GIS area polygon, a letter from the DMRE indicating the special nature of the project and an official letter from the municipality.
- e) NERSA shall ensure the following when evaluating DMRE electrification projects:
  - Separate household connections as new area(s) of supply from DMRE's final contracted projects (i.e. based on the Gazette) for licensing and Schedule 1 (List of Areas of Supply) amendment.
  - The recipient of INEP funding for house connections or new area of supply must follow NERSA Distribution Licensing Procedure as indicated in flow chart 1 below.
  - Should there be some changes during the year (following the DMRE Change Management Process) the same information should be supplied to NERSA prior to NERSA approving that the project should go ahead.
  - For any special project to be implemented during the year on request of Government, the same information as listed above must be provided. Since these projects may not be included in a Gazette, a formal letter from the DMRE must be submitted to NERSA as part of the application.

## Flow Chart 1: Integrated Electrification Projects Licensing Process



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