



The National Energy Regulator of South Africa
Kulawula House
526 Madiba Street
Arcadia
0083
Email: mypd@nersa.org.za

4 August 2026

**RE: COMMENTS ON THE WHOLESALE ELECTRICITY PRICING METHODOLOGY
CONSULTATION PAPER**

A. Introduction

1. We write to you as **Law for Energy Transitions Africa (LETA), the Green Connection** and **groundWork**.
2. LETA is a consortium of NGOs in Africa, including Natural Justice¹ and the Centre for Environmental Rights,² which provides technical legal input to shape laws, policies and decisions that advance just transitions to equitable renewable energy power systems across Africa.
3. The Green Connection is a registered non-governmental organisation that believes economic growth and development, improvement of socio-economic status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. It aims to provide practical support to both the government and nongovernmental/civil society sectors, which are an integral part of sustainable development.³
4. groundWork is a non-profit environmental justice organisation based in South Africa (established in 1999) that walks in solidarity with communities vulnerable to

¹ <https://naturaljustice.org/>.

² <https://cer.org.za/>.

³ <https://thegreenconnection.org.za/>.



environmental injustice. It works with fenceline communities to promote a just transition, focusing on campaigns in Climate & Energy Justice, Coal, Waste, and Environmental Health.⁴

5. We submit herein our comments on the Wholesale Electricity Pricing Methodology (“the Methodology”) Consultation Paper.
6. We note that the Methodology seeks to do, inter alia, the following:
 - 6.1. Separate market pricing and regulated charges;
 - 6.2. Make provision for the role of the Central Purchasing Agency (CPA);
 - 6.3. Introduce non-avoidable charges (capacity, legacy, network charges and subsidies); and
 - 6.4. Provide the basis from which the wholesale price rules will be developed.

B. General Comments

7. We recommend that these comments be read alongside the comments submitted on the Transitional Pricing and Vesting Contracts Framework (“the Framework”), as a number of similar and relevant concerns are raised in those comments, which we have repeated here.
8. Overall, we are concerned that adding on a number of costs as per the tariff – in particular the legacy charge – as a means to enable for the recovery of imprudently incurred costs and stranded assets, will expose consumers to high electricity prices; distort and dilute the cheaper price advantages of renewables; and risk duplication of charges.

⁴ <https://groundwork.org.za/>.



9. International examples show that the transition from vertically integrated systems to competitive electricity markets requires well-designed, transparent, consultative, and time-bound mechanisms for the recovery of legitimate legacy costs limited to what is strictly necessary to preserve system reliability and regulatory certainty, while creating incentives for the orderly retirement of old fossil-based plants.
10. Our general comments below, focus on:
 - 10.1. The effect of the proposed Wholesale Tariff on Constitutional rights, statutory obligations and on South Africa's energy transition – and the need for alignment of the Methodology with various legal obligations;
 - 10.2. The need for full transparency and prior consultation on determining the components to the wholesale tariff, including the composition of the legacy charge;
 - 10.3. Errors and inconsistencies in the Methodology, and overlap with the Transitional Pricing Framework, SAWEM Code and Rules;
 - 10.4. The need for more clarity on the transition period and what happens thereafter; and
 - 10.5. The risk of double counting.
- i. **Effect of the proposed Wholesale Tariff on Constitutional rights, statutory obligations and on South Africa's energy transition**
11. Various elements of the wholesale tariff – in particular the legacy charge - could have the effect of protecting incumbent cost structures, namely Eskom Generation's coal fleet, to the exclusion of cleaner, efficient, low-marginal-cost generators.
12. South Africa's courts have confirmed the Constitutional rights violations caused by coal-fired power in South Africa, particularly in South Africa's designated air quality



priority areas, like the Mpumalanga Highveld, where a number of Eskom’s coal plants are based.⁵ These infringements on the section 24 right to an environment not harmful to health and well-being⁶ remain largely unaddressed, as air quality in South Africa’s priority areas continuously fails to meet legislated health-based ambient air quality standards.⁷ A number of Eskom facilities, which are key contributors to the air pollution in the priority areas, particularly the Highveld, have been exempt from compliance with air pollution Minimum Emission Standards under the Air Quality Act, 2004.⁸

13. It is the Constitutional duty of government to address the harms caused by South Africa’s reliance on coal-fired power.
14. In addition, it is well established that South Africa’s energy sector has the highest greenhouse gas (GHG) emissions in the country; that South Africa has committed to a just energy transition towards cleaner renewable energy sources and to reducing its GHG emissions in line with its Nationally Determined Contribution under the Paris Agreement and now the Climate Change Act, 2024; and that South Africa has the potential to significantly reduce GHG emissions (and alleviate energy poverty and the health impacts of coal power generation) by deploying more renewable energy.

⁵ *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* (39724/2019) [2022] ZAGPPHC 208 (18 March 2022) (“the Deadly Air case”); *African Climate Alliance and Others v Minister of Mineral Resources and Energy and Others* (56907/2021) [2024] ZAGPPHC 1271 (4 December 2024) (“the Cancel Coal case”); and *South Durban Community Environmental Alliance and Another v Minister of Forestry, Fisheries and The Environment and Others* (479/2023) SCA.

⁶ S24(a), Constitution of the Republic of South Africa, 1996.

⁷ See <https://saaqis.environment.gov.za/>; most recent National Air Quality Officer report, 2023, figure 4, p8: <https://saaqis.environment.gov.za/Pagesfiles/2023%20NAQO%20Report.pdf>; and <https://www.gov.za/news/speeches/deputy-minister-bernice-swarts-national-priority-area-air-quality-summit-24-jun-2026>.

⁸ Listed Activities and Associated Minimum Emission Standards Identified in terms of Section 21 of the National Environmental Management: Air Quality Act, 2004.



15. The Climate Change Act, 2024 *specifically* requires the review and, if necessary, revision, amendment, coordination and harmonisation of relevant policies, laws, measures, programmes and decisions in order to ensure that the risks of climate change impacts and associated vulnerabilities are taken into consideration. This would include the need for alignment of the wholesale tariff and this Methodology with the Climate Change Act.
16. The National Energy Regulator Act, 2004 obliges NERSA to act in the public interest, and make decisions that are consistent with the Constitution and all applicable laws.⁹ Further applicable law would include the Electricity Regulation Act, 2006 (as amended in 2024) (ERA), which has the objective to, inter alia, “ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic.”¹⁰
17. It is therefore NERSA’s statutory duty to ensure that this Methodology and subsequent rules to be adopted are aligned with these various legal obligations. As such, NERSA must do all in its power to address the health and environmental impacts of South Africa’s coal-fired power fleet, and to ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, through the wholesale tariff and its governing rules. In the context of the present Methodology, this means:
- 17.1. Setting out clear and unequivocal objectives in the Methodology and rules to be adopted, confirming the need to ensure that South Africa’s coal fleet is

⁹ S9 and 10, NERSA Act, 2004.

¹⁰ S2(b), ERA.



decommissioned and phased out in line with South Africa's Constitutional and climate obligations, as well as its just energy transition objectives;

- 17.2. Reconsidering the legacy charge in its entirety. The Methodology must ensure that the legacy charge – a transitional cost recovery scheme for Eskom and any government plans to publicly procure under section 34 ERA – does not create excessive cost additions that would be barriers to the deployment of clean and less harmful energy technologies or extend the economic life of fossil-fuel based generation;
- 17.3. Ensuring, in rules, that only facilities compliant with the law (such as the Listed Activities and Associated Minimum Emission Standards Identified in terms of Section 21 of the National Environmental Management: Air Quality Act, 2004) are able to participate in the SAWEM;
- 17.4. In compliance with the Climate Change Act, 2024 section 7, ensuring that the Methodology, and subsequent rules to be adopted, give effect to the principles and objects set out in the Climate Change Act;¹¹
- 17.5. Clarifying in the Methodology that capacity charges are intended solely to preserve reliability during the transition and should not become a mechanism for extending the economic life of fossil-fuel based generation assets beyond what is reasonably necessary. Periodic review of the capacity charge must therefore be incorporated into the Methodology; and
- 17.6. Where appropriate, making provision – through a consultative and transparent process - for repurposing or the reuse of existing infrastructure, including using old plants sites to develop renewable generation, battery

¹¹ S7, Climate Change Act.



storage and other clean energy resources to benefit from existing grid connections.

ii. The need for full transparency and prior consultation on determining the components to the wholesale tariff, including the composition of the legacy charge

18. The Methodology states its own purpose as being to “establish a **transparent** and regulated pricing structure ...” (emphasis added).
19. The proposed legacy charge, will include: “any difference due to competitive market prices that are less than or more than the legacy PPA costs (REIPPP) and legacy cross-border contracts, stranded assets and vesting imbalances”.¹² In other words, this charge will enable for the recovery of the costs of historic power purchase agreements (PPAs) (e.g., REIPPPP and vesting contracts with the Eskom legacy fleet); as well as stranded assets and Central Purchasing Agency (CPA) imbalances. This could include imbalances from any new and future section 34 PPAs, as the CPA is required, under the ERA, to “be the buyer for existing Independent Power Producer power purchase agreements, **as well as new Independent Power Producer power purchase agreements, as required by Ministerial determination**”¹³ (emphasis added).
20. The key impact of concern is that everyone, including consumers, must pay this legacy charge – irrespective of the source of the cost¹⁴ - and that the door is left open for the recovery of potentially substantial and wasteful costs with no accountability or redress.

¹² Table at para 11.1.

¹³ S34B(5)(c)(i), ERA.

¹⁴ See para 11.14: Regulated Retail Traders that are Market Participants will recover this cost in their retail tariffs from their Captive Customers.



21. Very limited provision is made for visibility over what the legacy charge will cover, nor will it be possible to attribute the costs to particular projects.
22. There is a risk that the current bundled legacy charge will hide Eskom's cost pass-through and other future s34 IPP pass throughs, behind historic renewable energy IPP procurement programme (REIPPPP) attribution.
23. Without transparency, Eskom generation and the state can simply continue to recoup the costs of imprudently procured power generation and stranded assets (coal, nuclear power or high capacity factor gas, for example) with no consequence.
24. Recommendations to align the Methodology and subsequent rules with the stated purpose of establishing a transparent wholesale pricing structure, include the following:
 - 24.1. Prior to determining the legacy charge there should be a public consultation process, setting out the proposed costs to be covered by the charge, with an opportunity for consideration and public comment.
 - 24.2. There must be full visibility on the composition of the legacy charge, separating attribution of legacy charges by source, with improvements to the Central Purchasing Agency (CPA) transparency regime. Section 34 PPAs (REIPPPP and other IPP rounds), Eskom Generation vesting contracts, and stranded asset costs must be separately visible on every tariff schedule.
 - 24.3. The CPA should publish **detailed** annual reports on vesting arrangements, forecasts, and legacy charge calculations. The draft CPA Conduct Rules currently state that the CPA “shall publish its own report on an annual basis, including information on vesting agreements.”¹⁵ As currently framed, neither

¹⁵ Section A, paragraph 5, draft CPA Conduct Rules.



the CPA nor the Methodology provide sufficient detail on the reporting obligations and requirements for comprehensive and transparent CPA reporting.

iii. Errors and inconsistencies in the Methodology, and with the Transitional Pricing Framework, SAWEM Code and Rules

25. The Methodology aims to determine how efficient market prices are formed. The Transitional Generation Pricing and Vesting Contract Framework (‘the Framework’) aims to determine how those market prices are translated into generator revenues during the transition. Both instruments should be assessed together to ensure that price formation and transitional revenue stabilisation are consistent, technology-neutral, and supportive of South Africa’s long-term clean energy transition.
26. There is much uncertainty regarding the overlap and alignment between this Methodology, the Framework and the draft SAWEM Code and Rules of February 2026. There are instances where the Methodology, the Framework and the Rules and Code do not speak to one another, and/or seek to regulate the same thing (for example, vesting contracts or CPA functions, which are dealt with in this Methodology, in the CPA Conduct Rules and in the Framework) but in a piecemeal way. This risks substantial ambiguity and confusion and will create problems for the implementation of the overall SAWEM framework.
27. A further concern is that national electricity pricing and power market policy reforms have yet to be finalised by government, or considered by affected stakeholders, with a revised Electricity Pricing Policy and a market transformation paper set to be



released for comment.¹⁶ These policy reforms should inform and be aligned with the NERSA Methodology and Framework.

28. Then, there are inconsistencies within the Methodology itself. The title page titles this document as the “Wholesale Electricity Pricing Methodology Consultation Paper” but then the Introduction and Purpose sections refer to a Wholesale Electricity Price or Pricing Framework.

29. The legacy charge is referred to differently throughout:

29.1. Its definitions table says Legacy Charge = SMP minus hedge (in Legacy Contracts and Vesting Contracts) — this is one combined variable.

29.2. Its paragraph 11.16 formula splits this into two separately-calculated additive terms — Legacy Contract cost (CPA's Section 34 PPA payments less SAWEM revenue) and Vesting Contract difference (Eskom Generation/Distributor hedge mismatch) — divided by volume.

29.3. Paragraph 11.9 then adds a third risk source: Generation Capacity Charge shortfalls "may impact the Legacy Charge due to potential volume risk" — but this third component never appears in the paragraph 11.16 formula at all.

29.4. The Methodology's own tariff-structure table (11.1) lists the legacy charge as recovering "legacy cross-border contracts, stranded assets and vesting imbalances" — but these specific items do not appear in its own formula (which only covers Section 34 PPAs and Vesting Contracts). While s34 PPAs

¹⁶ <https://www.polity.org.za/article/cabinet-approves-release-of-revised-electricity-pricing-policy-and-market-transformation-paper-for-comment-2026-07-30>.



may indeed cover stranded assets and cross border contracts, this should be clarified.

30. Further, there are a number of provisions in this Methodology which contain incomplete sentences, duplicated sentences, and errors, including:

30.1. the methodology refers (in many places) to the Wholesale Energy Market – this should read electricity market.

30.2. The definition for “wholesale price for energy” is incomplete.

30.3. Incomplete sentence at the end of paragraph 7.9.

30.4. Paragraph 9.1 last sentence is repeated.

31. Recommendation: the Methodology; the Framework and the draft SAWEM Code and Rules should be carefully reconsidered with a view to addressing any inconsistencies and ensuring full alignment.

iv. More clarity is needed on the transition period and what happens thereafter

32. The Methodology should stipulate the duration of the transition period as an important marker for clarity and planning going forward. In this regard, we refer to our comments on the Transitional Pricing and Vesting Contracts Framework.

33. The Methodology states that “the Wholesale Tariff for Energy will continue to be calculated **even after the Transition period** as an estimation of the year ahead, prudently incurred wholesale costs informed by assumed volumes and assumed SMP and other efficiency benchmarks”¹⁷ (emphasis added). Yet, it is not clear how the wholesale tariff for energy will be applied in practice, specifically vis-à-vis the

¹⁷ Para 7.11.



system marginal price for energy paid by distributors and traders when buying on the SAWEM after the transition period.

34. The Methodology states that “the Wholesale Energy Charge shall then be included in the retail energy charges. The Regulated Retailer is exposed to shortfalls or surpluses in revenue caused by buying in the SAWEM (including related hedges) and selling at the retail tariffs informed by the benchmark. Such shortfalls shall not be recovered from customers through revenue-clearing mechanisms.”¹⁸ Is the wholesale energy charge purely an indicative benchmark or will it be charged to retailers? Who carries the shortfall if it cannot be recovered from customers?
35. Clarity should also be provided on whether any new generation capacity to be developed by Eskom (gas or nuclear for example) would be subject to a vesting contract and/or whether Eskom could recoup its costs for new generation capacity through the legacy charge. Arguably new generation capacity should not fall within the transitional measures or obtain a vesting contract. Still, this must be clarified, and a key question is whether any of the costs of any of Eskom’s new generation capacity can be recouped under the legacy charge, potentially as “stranded assets”.¹⁹

v. The risk of duplication and double counting.

36. The distinction between wholesale pricing and retail tariffs needs to be more clearly set out, to avoid duplication and double counting.
37. The relationship between the Multiyear Price Determination (MYPD) and the wholesale tariff must also be more clearly delineated. The Methodology states “this methodology shall apply to the determination of the Wholesale Tariff for the SAWEM for the duration of the MYPD6 period or until replaced by new methodologies

¹⁸ Para 7.12.

¹⁹ See para 11.12, the Methodology.



determined by NERSA”.²⁰ It is not clear what the status of the MYPD will be in relation to the wholesale tariff. Will Eskom still be entitled to recover costs under the MYPD as well as through the wholesale tariff? Will this Methodology replace the MYPD or run concurrently with it?

38. Importantly, Eskom’s Regulatory Clearing Account (RCA) is not mentioned in the Methodology or in the Framework at all. The RCA too, is important and relevant for the overall tariff methodology and the question of Eskom’s cost recovery, and should be addressed in the Methodology.

C. Consultation Paper Questions

39. We note that there appear to be no questions 1 or 3. The questions start at question #2. There are two sets of questions numbered as question 6.

40. Please note that we do not answer every stakeholder consultation question posed by NERSA.

NERSA Consultation Paper Question	Our Response
Question 2: Market Price vs Regulated Charges	
a) Do stakeholders believe that the proposed separation between market prices and regulated prices and that this separation will result in efficient and competitive electricity prices as follows: • competitive market prices (e.g. Day-Ahead Market prices); and • regulated charges (e.g. capacity, legacy, and subsidy charges under the wholesale pricing framework) market entry requirements for Distributors?	The efficiency and competitiveness of the electricity prices will very much depend on the nuances and details of what will be allocated as energy (market) prices and what will be subsumed into regulated charges. Much more clarity is needed here to identify: • how exactly the legacy charge will be determined and comprised particularly the provision to recover “stranded assets” through the legacy charge;

²⁰ Para 5.1, the Methodology.



	- the relationship between the wholesale tariff and the retail tariffs, with defined delineations of how these will be distinguished; - what costs will be allocated to fixed (generation capacity) costs and what will be classified as variable; As stated above, the efficiency of prices will depend on how much and what costs can simply be passed through onto the legacy or capacity charge.
b) Do stakeholders support the requirement that all licenced retail traders must conclude Vesting Contracts with the CPA before participation in the wholesale market?	In principle yes, and certainly for licensed distributors and default retailers, like Eskom Distribution. Whether or not we support these contracts will depend on the duration and terms of these contracts.
c) Retail electricity prices will be based on the Wholesale tariff structure and charges, with added costs for the distribution network, retail procurement of power, cross-subsidies (not recovered in the Wholesale Price) and administrative services; if so, how should NERSA's oversight role in approving these retail charges be defined?	NERSA must ensure that any charges already recovered at wholesale level are not duplicated and recovered again at retail level. This means that NERSA must have a very clear insight into the composition of, and rationale for, all the charges at both wholesale and retail level.
d) What is the stakeholder's view on the relationship between retail and wholesale prices?	Not enough detail is provided in the Methodology on the composition of the wholesale tariff, and any revisions to retail tariffs, to be able to answer this question. It is important that more detail and clarity be provided here in what is and what is not covered under wholesale versus retail tariffs – it is crucial that double counting be avoided.
Question 4: Wholesale Overall Tariff Design	



a) Do stakeholders agree that the proposed wholesale tariff structure: • appropriately separates competitive energy pricing from regulated charges; • provides efficient price signals; and • supports a fair and transparent transition to a competitive market?	As stated above, much will depend on what costs can be passed through and claimed under the legacy charge and/or the generation capacity charge. Below we make some recommendations on the overall tariff design in response to this question 4. Recommendation on the Generation Capacity Charge (11.8-11.11): The proposed Generation Capacity Charge aims to recover the fixed costs associated with maintaining generation capacity available to the system. The Methodology does not specify whether eligibility for capacity remuneration will be determined according to the technology providing the service; or to the actual performance characteristics of the resource. The Methodology should expressly provide that eligibility for generation capacity remuneration is based on objective performance criteria, rather than on generation technology. The regulatory framework should recognise that capacity services may be provided by multiple resources, including: • Battery storage systems; • Demand response; • Aggregated distributed generation resources; and • Hybrid renewable projects. The relevant criteria should be the resource's demonstrated ability to satisfy reliability and availability requirements.
--	---

	Recommendation on the Legacy Charge (11.12 – 11.16): Key concerns are the following: • The legacy charge has a wide scope of what it can cover (stranded assets for example). • The charge is not avoidable. • The Methodology does not distinguish between legitimate transition cost recovery, and the continued economic support of fossil-fuel based generation assets. Maintaining indefinite cost recovery for legacy fossil-fuel based generation risks stalling the transition to cleaner energy sources. Transitional support for legacy cost recovery mechanisms must be fully transparent to help ensure that they are limited to objectively justified costs. Furthermore, it should be <i>transitional</i>. It should not allow for the recovery for stranded assets into the future.²¹ The Methodology should specify that legacy charges are intended exclusively to recover unavoidable transition costs and should not operate as an indirect mechanism for preserving high-emitting fossil-fuel based generation assets beyond their economically justified transition period, or for enabling imprudently publicly procured new generation capacity.
--	---

²¹ Para 11.12 refers to coverage for “stranded assets (in a future capacity market).”



Where existing generation assets no longer provide system value, regulatory policy should encourage their retirement or repurposing, rather than continuing indefinite support through transitional tariff mechanisms. The repurposing of these generation assets should be designed to provide opportunities for solar capacity and storage solutions.

Recommendations on Ancillary Services Charge (11.18- 11.19):

The Methodology identifies ancillary services as services supplied to the National Transmission Company by generators, distributors or end-use customers, necessary for the reliable and secure transport of power from generators to distributors and other customers. However, the Methodology does not explicitly recognise that ancillary services have evolved significantly and are no longer provided exclusively by synchronous fossil-fuel based generators.

Modern battery storage technologies frequently outperform conventional fossil-fuel-based generation in several ancillary service markets, particularly those requiring rapid response.

Failure to expressly recognise these capabilities may unduly privilege fossil fuel generators and discourage participation by more efficient and economic clean energy technologies. The Methodology should expressly establish that ancillary services constitute technology-neutral products whose procurement should

	be based exclusively on measurable technical performance. Eligibility should therefore be determined according to the resource's demonstrated capability to provide services such as: • Frequency regulation; • Fast frequency response; • Operating reserves; • Voltage support; • Black-start capability; and • Ramping services. Recommendations on Loss Charges (11.22): The Methodology proposes recovering electrical losses as part of the Wholesale Tariff. However, no distinction appears to be made between resources that increase network losses and those that actively reduce them. Battery storage, distributed generation and demand-side flexibility frequently reduce power flows over long transmission distances and therefore reduce system losses. Allocating loss charges without recognising these benefits will weaken incentives for these investments that improve overall system efficiency. Loss allocation methodologies should reflect actual system impacts and recognize resources capable of demonstrably reducing electrical losses. Recommendation on Transmission Charges (11.17): Transmission charging methodologies should
--	---

	recognise the network value created by technologies capable of: • Reducing network congestion; • Deferring transmission expansion; • Improving utilisation of existing assets; • Reducing transmission losses. Battery storage, distributed generation, and flexible demand resources may all produce these benefits.
b) What risks or unintended consequences do stakeholders foresee in the proposed structure?	Key risks or unintended consequences include: • That there is no clarity on exactly what is and what is not covered in for example, the capacity charge, the energy charge, the legacy charge, nor is there any clear indication of timeframes for which some of these charges (like the legacy charges) will apply. • That consumers and the people of SA are made to carry the burden of inefficiently incurred electricity costs, essentially subsidising polluting, expensive and inefficient power generation; • Continued reliance on harmful coal power (if fossil generators can simply recover costs through a legacy or capacity charge) with significant prejudice and harm to the health of communities living in coal-affected parts of SA and the wider public of SA, as the country is increasingly exposed to climate change impacts



	That there are no incentives or opportunities for cleaner and more efficient technologies to come in.
Question 5: Wholesale Price Framework	
a) How does the proposed wholesale price structure ensure full cost recovery without double counting across its components?	It is not clear from the Methodology that the price structure does, or will do, this. In fact, a key critique of the Methodology (as stated above) is the risk of double counting.
b) What could be measures to ensure transparency and auditability of all price components?	We refer to our recommendations made in section B(ii) above. Transparency and prior public participation on the determination of the various charges and components of the wholesale tariff must be mandatory. Further, disaggregated components and the costs that can be recovered through the legacy charge and various other components of the wholesale tariff must be made clear in the Methodology and ultimate rules to govern wholesale pricing. All of this information must be automatically publicly available.
c) How could the framework ensure price stability while allowing for necessary adjustments?	As stated above, transparency and public consultation are key elements here. Any adjustments and/or measures to ensure price stability must take place within a clearly defined process with mandatory detailed information disclosures and subject to public scrutiny.
d) Does the wholesale price design align with the future competitive market (SAWEM) objectives?	See our comments above and concerns around the legacy charge and capacity charge in particular, which could render the SAWEM objectives redundant – if all imprudently incurred costs can simply be recovered through regulated tariffs.



e) Do stakeholders consider the Wholesale Price Methodology to be simple and practical or complex and impractical – if the latter, what alternatives should be considered?	There is not enough information provided in the Methodology to answer this question. At present, not enough detail is provided on the different components of the Methodology or how they will be determined.
Cross-Subsidisation	
f) Do stakeholders agree that socio-economic cross-subsidies should continue to be funded through electricity tariffs at the wholesale level?	Yes.
g) Are there alternative funding mechanisms that should be considered?	More nuanced measures should be introduced to differentiate cost allocation, where appropriate, based on type of consumer, and to ensure that support goes primarily to low income households, with industry, business and high-income households (those who can afford it) supporting the bulk of legitimate and necessary power sector costs.
Legacy Charges	
h) How could legacy contract costs be defined and verified (especially Section 34 PPAs)?	Legacy contract costs must be disaggregated and published for consultation before being approved by NERSA. As above, where existing generation assets no longer provide system value, regulatory policy should encourage their retirement or repurposing, rather than continuing indefinite support through transitional tariff mechanisms like the legacy charge. There is also a concern that unrecoverable costs of new (yet to be procured) IPPs to be procured by the CPA, could be covered by the legacy



groundWork

LETA



	charge, ²² even if these projects are not value for money or optimal for the power system. Checks and balances must be put in place to enable the CPA (and ultimately consumers) and the System Operator to avoid being locked into future s34 power procurement, where it would risk displacing cleaner and cheaper electricity sources.
i) Is it justifiable to make the legacy charge non-avoidable for all market participants and balance responsible parties?	No. In particular it should not be a non-avoidable cost for low-income residential consumers. This would be a disproportionate burden, while large or more resourced consumers may mitigate exposure through off-grid arrangements. Although this is more applicable for retail tariffs, NERSA should consider introducing mechanisms to assess the distributional impact of the legacy charge and differentiate cost allocation where appropriate, based on type of consumer.
Question 6	
a) Stakeholders are requested to comment on the proposed mitigation strategies for the identified risk and provide further solutions.	The mitigation measures are too vague and broad, for example “strong regulatory oversight”; ²³ “NERSA to provide strict requirements when the wholesale prices and retail tariff submissions are made” ²⁴ or “wise design of retail tariff structures...”. ²⁵ Some do not make sense: “Solutions will be introduction if long-term contracts, vesting contracts and market surveillance.” ²⁶

²² Para 11.12, p18, the Methodology.

²³ In response to the risk of “market abuse”.

²⁴ In response to the risk of “timing of approvals and impact on retail tariffs”.

²⁵ In response to the risk of, inter alia, bypass by customers of generation capacity charges.

²⁶ In response to the risk of “Price volatility”.



groundWork



	It is not clear that any of the measures proposed here would or could tangibly reduce risks as they all depend on further (unknown) risk mitigation steps being taken. A risk mitigation measure not mentioned for the risk of an “insolvent CPA not able to fulfil its contractual obligations in terms of PPAs with REIPPPP generators or any other ERA section 34 generators” is that NERSA and the CPA should be able to exercise discretion to avoid being contractually bound to unduly onerous and costly s34 PPAs. Adequate due diligence, prior NERSA approval and public participation prior to CPA contracting should be written into the NERSA rules. Ideally ERA should also be amended to ensure a more aligned and consultative process from the outset in the making of any s34 Ministerial determinations, given the downstream risks that these PPAs pose for the solvency of the CPA and ultimately for electricity affordability for consumers.
--	---

41. Please feel free to contact us should you have any questions or wish to discuss this submission further.

Yours faithfully



Nicole Loser

Law for Energy Transitions Africa

A handwritten signature in black ink, appearing to read "Lmak", enclosed within a faint rectangular border.

Lisa Makaula

The Green Connection

A handwritten signature in black ink, appearing to read "Moodley", enclosed within a faint rectangular border.

Yegeshni Moodley

groundWork