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4 August 2026

**RE: COMMENTS ON THE TRANSITIONAL GENERATION PRICING AND VESTING CONTRACT FRAMEWORK**

**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 Justice<sup>1</sup> and the Centre for Environmental Rights,<sup>2</sup> 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.<sup>3</sup>
4. groundWork is a non-profit environmental justice organisation based in South Africa (established in 1999) that walks in solidarity with communities vulnerable to environmental injustice. It works with fenceline communities to promote a just

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<sup>1</sup> <https://naturaljustice.org/>.

<sup>2</sup> <https://cer.org.za/>.

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



transition, focusing on campaigns in Climate & Energy Justice, Coal, Waste, and Environmental Health.<sup>4</sup>

5. We submit our comments on the Transitional Pricing and Vesting Contracts Framework (“the Framework”) Consultation Paper.
6. The purpose of the Framework, as per section 2.4, is that it is “a transitional regulatory mechanism intended to support the orderly development of competitive electricity markets while mitigating structural and transitional risks during the early stages of market reform”.
7. Vesting contracts can play a useful role in supporting the transition from vertically integrated electricity systems to competitive wholesale markets by protecting consumers from the market power of the incumbent (Eskom) and providing short-term revenue certainty to legacy generators.
8. However, if not carefully designed, such transitional protection mechanisms may entrench incumbent market power, distort price signals, delay the retirement of carbon-intensive assets, and shift inefficiencies to consumers. The transitional arrangements proposed in the Framework will therefore have significant implications for electricity prices and for South Africa’s electricity mix, and consequently SA’s transition to cleaner energy sources, and must be well regulated.
9. We note that the Framework acknowledges the need to mitigate the market power of incumbent generators (Eskom), promote transparent price formation, support market stability during the early stages of reform, and gradually reduce regulatory intervention as competition matures. However, the Framework’s proposed provisions already risk unduly privileging Eskom, and shutting out new entrants, undermining any anticipated economic efficiency of the South African Wholesale Electricity Market (SAWEM), and potentially slowing South Africa’s transition to cleaner and more affordable energy, with reduced pollution, for the people of South Africa.

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<sup>4</sup> <https://groundwork.org.za/>.



10. To reduce risks posed by the transitional arrangements for South Africa’s transition to cleaner and more affordable electricity, vesting contracts and the transitional measures in the Framework should be structured as **strictly transitional instruments**, supported by **clear time-bound limits, robust safeguards against anti-competitive behaviour, transparent and accountable cost recovery frameworks, competitive procurement and pricing mechanisms, appropriate limits on market concentration, and alignment with broader market development and decarbonisation objectives**. The Framework does not structure the transitional measures this way.

11. In this regard, we are concerned that the Framework:

- 11.1. is not sufficiently aligned with the Constitution, the Climate Change Act, the Electricity Regulation Act and just transition imperatives in the public interest;
- 11.2. is lacking in sufficient detail for meaningful comment and implementation and is not adequately aligned with the Wholesale Pricing Methodology, draft South African Wholesale Electricity Market (SAWEM) Code, February 2026, and Market Rules (“the SAWEM Code and Rules”), and national policy;
- 11.3. does not do enough to promote transparency and consultation in respect of the transitional pricing mechanisms and vesting contracts;
- 11.4. fails, to provide for clear, time-bound limits and objective criteria for the transitional provisions; and
- 11.5. creates risks of double recovery.

12. Below we set out our general comments and concerns with the Framework in more detail.



## **B. General Comments on the Framework**

13. We recommend that these comments be read alongside the comments submitted on the Wholesale Pricing Methodology (“the Methodology”), as a number of similar and relevant concerns are raised in those comments, which we have repeated here.

### **i. Alignment of the Framework with the Constitution, the Climate Change Act, the Electricity Regulation Act and just transition imperatives in the public interest**

14. There is no express alignment of the Framework with the Constitution of the Republic of South Africa (“the Constitution”); just transition imperatives in the public interest; or with legislative obligations including requirements to align with the Climate Change Act, 2024.

15. The Framework must prioritise establishing a minimum, reasonable level of transitional protection necessary to facilitate competitive market development, rather than maximising and prioritising revenue stability for Eskom’s coal generators.

16. If Eskom is to retain structural advantages through the transitional measures in the Framework, the Framework could delay decarbonisation, and the decommissioning of Eskom’s coal fleet, in circumstances where many Eskom coal plants are currently unable to comply with health-based minimum emission standards under the Air Quality Act, 2004.<sup>5</sup>

17. South Africa’s courts have recognised the impacts of electricity generation, particularly from coal power, on people’s Constitutional rights, as well as the duties of government to address these harmful impacts.<sup>6</sup> In the judgment in *Trustees for the*

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<sup>5</sup> Note that Eskom has been granted exemptions for compliance with Minimum Emission Standards for a number of its coal plant facilities, these exemption decisions are currently being challenged in the North Gauteng High Court - <https://cer.org.za/news/environmental-justice-organisations-challenge-eskoms-air-pollution-exemptions-in-court>.

<sup>6</sup> *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.



time being of *Groundwork Trust and Another v Minister of Environmental Affairs and Others*,<sup>7</sup> it was confirmed that air quality that is failing to meet National Ambient Air Quality Standards, is a “*prima facie* violation” of the section 24 right to an environment not harmful to health and wellbeing. The case was launched by environmental justice organisations who successfully claimed that Constitutional rights to a healthy environment are not being met for the people living and working in the Highveld Priority Area (HPA). By failing to substantially improve the air pollution in the HPA,<sup>8</sup> where a large portion of Eskom’s coal-fired power stations are based, the South African government is failing to uphold constitutional rights. Eskom’s air pollution is a primary contributor to the poor quality in the Highveld.

18. It therefore is the Constitutional duty of government to address the harms caused by South Africa’s reliance on coal-fired power. It can do so by taking steps to facilitate the replacement of Eskom’s polluting coal fleet with cleaner renewable energy, storage and other electrotechnology solutions as swiftly as possible. This would also be aligned with the government’s imperative and legal duty to address the impacts of climate change.

19. 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<sup>9</sup> 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.

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<sup>7</sup> (39724/2019) [2022] ZAGPPHC 208 (18 March 2022).

<sup>8</sup> 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>.

<sup>9</sup> [https://justenergytransition.co.za/#:~:text=South%20Africa's%20Just%20Energy%20Transition%20\(JET\),%20aims,and%20economic%20diversification%20\\*%20Fostering%20inclusive%20development](https://justenergytransition.co.za/#:~:text=South%20Africa's%20Just%20Energy%20Transition%20(JET),%20aims,and%20economic%20diversification%20*%20Fostering%20inclusive%20development).



20. It is NERSA’s legal duty under the Climate Change Act 2024, to give effect to the principles and objects set out in the Climate Change Act.<sup>10</sup> The Climate Change Act *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.
21. 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.<sup>11</sup>
22. 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.”<sup>12</sup>
23. NERSA must ensure that this Framework, and the SAWEM regulatory framework more broadly, are aligned with these various legislative and Constitutional obligations.
24. If the Framework is to grant indeterminate advantages to Eskom, to the exclusion of cleaner, renewable energy sources – as it appears intent to do – then the Framework is not aligned with government’s Constitutional duties to remedy the ongoing section 24 rights violations for people negatively affected by coal power, nor is it aligned with NERSA’s duties under the Climate Change Act or the ERA.
25. One example of structural advantages to Eskom includes the allocation of costs to fixed (generation capacity costs) versus variable. If a substantial portion of Eskom’s costs are classified as fixed (including its environmental compliance costs, as is

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<sup>10</sup> S7, Climate Change Act.

<sup>11</sup> S9 and 10, NERSA Act, 2004.

<sup>12</sup> S2(b), ERA.



currently proposed), then it could position Eskom generators to undercut other competing generators in its bids to the market. This would reinforce Eskom's market dominance and prolong South Africa's reliance on coal. If Eskom coal generators are bidding low market prices (because of unfairly high vesting prices), this will have implications for the overall electricity tariff, and it would distort the true cost of Eskom's coal power.

**ii. Absence of sufficient clarity and detail in the Framework and misalignment of the Framework with the Wholesale Pricing Methodology, draft SAWEM Code and Rules and national policy**

26. The Framework is lacking in sufficient detail and does not align with, or speak to, the other sets of rules and documents governing the SAWEM and pricing. The result is that the Framework, when read with the draft SAWEM Code and Rules, and with the draft Wholesale Pricing Methodology ("the Methodology"), is confusing and results in uncertainty and ambiguity on key issues.

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.<sup>13</sup> These policy reforms should inform and be aligned with the NERSA Methodology and Framework.

28. There is therefore a risk of significant misalignment between national policies and NERSA rules and positions. This will create problems for the implementation of the SAWEM framework and the overall power sector reforms under the Electricity Regulation Amendment Act, 2024 going forward.

29. Regarding the Framework's relationship with other NERSA documents, the Pricing Methodology should set the founding principles for wholesale pricing and this Framework ought to speak to and implement it. Instead, there are inconsistencies

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<sup>13</sup> <https://www.polity.org.za/article/cabinet-approves-release-of-revised-electricity-pricing-policy-and-market-transformation-paper-for-comment-2026-07-30>.



between the Methodology, the Framework and the draft SAWEM Code and Rules. For example, both the Methodology and the Framework use their respective price (Wholesale Tariff / Wholesale Price vs. Strike Price) to settle the hedge payment between market price and contract price — but derive it differently, with different formulas.

30. To the extent that the Framework is lacking in sufficient detail, we provide the following examples to substantiate:

- 30.1. NERSA's market monitoring and assessment functions, when it comes to transitional arrangements, are not set out in the Market Code or Rules, or in the Framework. Section 9.4 of the Framework sets out some provisions on periodic reviews and assessments by NERSA, but these (1) require much more specificity on the process to be followed by NERSA and (2) would be more suitably situated within rules and not a Framework document. The draft Market Code's definitions provision refers to a "market assessment" to be conducted by NERSA,<sup>14</sup> but the "market assessment is not addressed anywhere in the Code, despite being defined in it.
- 30.2. It is not clear who/what the contracting party for the vesting contracts will be. Will each Eskom generator be separated into a separate company for purposes of entering into the contract or will Eskom Holdings enter into each vesting contract? If the latter, this should be checked against South Africa's competition legislation, if the same party (Eskom Holdings) is the contracting party in each vesting contract, particularly as Eskom gradually phases into the market and its hedge price volume is diminished.
- 30.3. 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

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<sup>14</sup> "(122) "Market Assessment" means an investigation conducted by NERSA into conditions of market power and effective trading in the SAWEM which may be conducted at any time but with the requirement that one Market Assessment is concluded each year during the Transition Period".



vesting contract and/or whether it 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.

**iii. The Framework does not do enough to promote transparency and consultation in respect of the transitional pricing mechanisms and vesting contracts**

31. Stakeholders have already critiqued the draft Market Code and Market Rules<sup>15</sup> for their failure to ensure adequate transparency and access when it comes to crucial market-related decisions and records, such as vesting contracts. The Framework provides no further clarity or assurances on this issue.

32. Key recommendations for the Framework include:

32.1. Vesting contracts must be publicly available. Prior to their approval, the draft contracts must be made available for public consideration and comment. The requisite public participation process and publication of the vesting contracts must be expressly mandated in the SAWEM Market Code and Rules, and confirmed in this Framework.

32.2. The determination of the different transitional pricing components, namely the capacity charge; ancillary services charge; and the strike price must be fully transparent and subject to public participation.

**iv. The Framework must, but fails, to provide for clear, time-bound limits and objective criteria for the transitional provisions.**

33. Objective end-of-transition criteria are needed - anchored in the proposed market assessment mechanism to be undertaken by NERSA. However, as stated above, the draft Market Code, Market Rules and the Framework all fail to provide any clarity on the timeframes and process for determining the transition period. In the absence of

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<sup>15</sup> See comments to NERSA on the Draft SAWEM Market Code and Rules, dated 18 June 2026, by LETA, Natural Justice, the Green Connection and Project 90 by 2030.



clear timeframes, then at the very least, the Framework (and ideally the Market Code and Rules) should commit NERSA to objective triggers within that mechanism rather than discretionary findings.<sup>16</sup>

34. The Framework presents illustrative vesting pathways but does not establish objective criteria governing the progressive reduction of vesting volumes.
35. As it currently stands, the Framework creates the risk that vesting arrangements become primarily a mechanism for stabilising the revenues of Eskom's coal generation plants, and with no determinate ending. The absence of more objective transition criteria risks creating regulatory uncertainty.
36. International experience suggests that transitional mechanisms are credible when accompanied by predetermined sunset criteria such as defined implementation periods or transparent review milestones.
37. Recommendations:
  - 37.1. Paragraphs 9.8, 9.10–9.14: The Framework should clarify that vesting arrangements are intended as transitional instruments with a clear and limited scope and duration.
  - 37.2. Paragraphs 9.16–9.26: the Framework should establish objective criteria based on clear time indicators, implementation milestones and/or defined review periods to guide the phase-out of vesting arrangements.

**v. Remuneration mechanisms appear to overlap, creating potential risks of double recovery.**

38. The Framework is not clear on how the recovery mechanisms here will align with the Multiyear Price Determination (MYPD) or with Eskom's Regulatory Clearing Account (RCA). Nowhere in the Framework or in the Pricing Methodology does it state how and whether the MYPD and/or the RCA will apply in the context of these additional

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<sup>16</sup> As set out in 9.43 of the Framework.



pricing methodologies. i.e. it is not stated, nor is it clear that the MYPD is to be replaced by the Wholesale Pricing mechanism or the Framework. This means that both this Framework, the MYPD and/or RCA could run concurrently, enabling Eskom to effectively recover its costs twice, or even thrice.

39. Further, the Executive Summary of the Framework makes reference that the Framework clearly separates capacity payments, ancillary services and SRMC pricing. However, it is not clear that they are indeed separate or that similar system attributes are not being remunerated through multiple payment streams within the Framework. For example, it appears that fixed costs recovered through capacity payments are also embedded in the benchmark pricing reference:
  - 39.1. Part 1 introduces capacity payments that incorporate return on capital, depreciation, fixed O&M, insurance, compliance costs and availability adjustments.
  - 39.2. Part 2 (Section 5.7, 5.11) separately compensates ancillary services through both availability payments and utilisation payments. While both payment components may be justified, additional explanation would strengthen confidence that these payments compensate distinct services and do not overlap with capacity remuneration.
  - 39.3. Part 5 aggregates these mechanisms into the Generator Revenue Requirement Benchmark combining: capacity payments; ancillary service payments; wholesale market revenues; and vesting settlements, for purposes of determining the benchmark pricing reference used for vesting settlement.
40. While these mechanisms may pursue different regulatory objectives, the Framework should explicitly state that the same system attributes are not being remunerated through multiple regulatory instruments. Clarifying these distinctions would improve transparency and reduce the risk of overlapping remuneration.



41. Recommendations:

- 41.1. Paragraphs 7.10–7.13: Provide additional explanation regarding the interaction between benchmark components.
- 41.2. Paragraphs 8.11–8.15: Clarify the economic and technical boundaries separating each revenue stream.

**C. Responses to NERSA’s Consultation Paper Questions**

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

| Consultation Paper Question                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Our response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <b>Part 1: Recovery of Capacity Costs</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>Question 1: NERSA’s objective is to ensure transparent and efficient recovery of prudent fixed generation costs while preserving efficient dispatch outcomes and maintaining security of supply during transition. Stakeholders are invited to comment on:</p> <ul style="list-style-type: none"> <li>• whether the proposed capacity cost structure appropriately separates fixed cost recovery from SRMC-based energy pricing;</li> <li>• whether the proposed availability-linked adjustment mechanism appropriately incentivises operational performance;</li> <li>• whether the proposed benchmark availability approach is appropriate across different generation technologies; and</li> <li>• whether any additional safeguards or implementation considerations should be incorporated into the Framework.</li> </ul> | <p>While we do not object to the separation between fixed generation cost recovery and SRMC-based energy pricing in principle, the recovery of fixed costs must not:</p> <ul style="list-style-type: none"> <li>• enable double counting and/or over recovery of costs already covered elsewhere in the Framework;</li> <li>• allow for recovery of capital costs that have already been recovered (e.g., ageing plants continuing to recover historical capital investments that have already been substantially amortised);</li> <li>• permit unrestricted fuel pass-through (e.g., consumers bearing the full cost of fuel price volatility regardless of procurement efficiency); or</li> <li>• protect generators from risks arising from their own fuel</li> </ul> |

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|  | <p>supply agreements or procurement decisions.</p> <p>The determination of what constitutes “prudent fixed generation costs”<sup>17</sup> as provided for in the Framework is therefore a key question to be answered by NERSA. This Framework, the Methodology and any rules to be adopted must clarify this.</p> <p>It is important that further conditions and requirements be attached to the capacity payment to ensure that this does not become a guaranteed revenue stream (e.g., ensuring coal plants recover fixed costs regardless of actual dispatch or market competitiveness) shielding inefficient or carbon-intensive assets from low market prices that would otherwise signal retirement. It is also not clear to what extent the replacement of capacity would be covered in this payment, and if so, how is the replacement value to be determined?</p> <p>Capacity should primarily reflect the reliability value provided to the electricity system, yet the proposed methodology largely frames capacity payments around historical cost recovery. International practices increasingly distinguish between investment recovery and remuneration for dependable capacity available to maintain resource adequacy.</p> <p>NERSA should strengthen the Framework by explicitly explaining</p> |
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<sup>17</sup> Paras 4.4 and 4.6, the Framework.

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|  | <p>the regulatory rationale for each recoverable component, what constitutes each component, and demonstrating that each represents a distinct cost category. For example, more clarity is needed on what constitutes “fixed operation and maintenance costs” and what constitutes “fixed compliance costs” – the definitions provided<sup>18</sup> are either too vague or too broad and open to various interpretations.</p> <p>It is important that not all operations and maintenance, and compliance costs are classified as fixed. For example, compliance costs related to carbon and pollutant emissions and waste disposal, scale directly with fuel use or generation volume and plant efficiency – they are variable and should be treated as such. However, the Framework refers to “Fixed Compliance Costs” as “non-variable costs incurred by the generator to meet statutory, regulatory, licensing, and environmental obligations required for continued operation of generation facilities” without making such a distinction. “Emissions”<sup>19</sup> are referred to separately as part of the short-run marginal cost, but it is not clear how these costs are derived and whether they relate to compliance, and if so, compliance with which legal requirements.</p> |
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<sup>18</sup> The Framework at para 4.9.3 states “Fixed O&M = Fixed operations and maintenance costs” and at para 4.9.5 states “Fixed Compliance Costs = Refers to non-variable costs incurred by the generator to meet statutory, regulatory, licensing, and environmental obligations required for continued operation of generation facilities”.

<sup>19</sup> Para 6.6.3, the Framework.

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>The risk of classifying costs like compliance or fuel costs as fixed is that market prices may not reflect actual system conditions, resulting in (1) distorted dispatch outcomes (e.g., higher-cost or less efficient plants being dispatched ahead of lower-cost alternatives), (2) inefficient investment signals (e.g., reduced incentives to invest in lower-cost or cleaner technologies), and (3) weakened operational discipline (e.g., limited pressure on generators to improve efficiency where revenues are partially guaranteed). Overall, this risks unintentionally prolonging the economic life of legacy coal assets.</p>                                                                                                                                      |
| <b>Part 2: Ancillary Services Contracting</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>Question 2: NERSA's objective is to ensure that ancillary services required for system reliability are procured efficiently and transparently without distorting wholesale energy market pricing outcomes. Stakeholders are invited to comment on:</p> <ul style="list-style-type: none"> <li>• whether the proposed separation between availability and utilisation payments is appropriate;</li> <li>• whether the proposed ancillary service categories appropriately reflect system reliability requirements;</li> <li>• whether any ancillary services should be subject to additional performance-based incentives or adjustments; and</li> <li>• whether alternative procurement or pricing approaches should be considered.</li> </ul> | <p>We don't object to system reliability services being separate from market pricing. However, ancillary services should primarily be regulated and provided for in the Wholesale Pricing Methodology – not in this Framework (to avoid duplication and confusion). Further, due to concerns regarding procurement transparency, cost recovery, pricing, and the interaction between ancillary services arrangements and the broader electricity market, ancillary services would be more appropriately addressed in a separate regulatory and technical assessment, rather than being integrated into a transitional Framework for vesting contracts. Modern electricity markets increasingly procure ancillary services such as frequency response, reserve, voltage support</p> |

and fast-response services from clean energy technologies, including battery storage and inverter-based resources (solar and wind) aggregated distributed generation resources; and hybrid renewable facilities.

Moreover, ancillary services should be defined as technology-neutral system products, rather than services implicitly associated with conventional synchronous/fossil-based generation, which is the approach taken by the Framework.

It is important that the pricing mechanism for ancillary services does not enable certain fixed or operational costs to be recovered twice (for example, the costs of maintaining reserve capacity).

The Framework recognises that ancillary services differ fundamentally from energy transactions and should therefore be procured and priced separately. However, the proposed Framework methodology appears to compensate both reservation (availability) and use of ancillary services (availability)<sup>20</sup> through separate payment streams. The Framework should provide a clearer justification of why both payment components are necessary and how the reservation (availability) payment under ancillary services doesn't overlap with capacity payments. Alternatively, NERSA should revise the Framework methodology to avoid double counting.

<sup>20</sup> Para 5.11, the Framework.

### Part 3: Offer Price Methodology

Question 3: NERSA's objective is to establish an SRMC-anchored offer pricing framework that supports efficient dispatch outcomes, transparent market price formation, limited bidding flexibility, and competitive market development during transition, while mitigating excessive market power during the early stages of market liberalisation. Stakeholders are invited to comment on:

- whether the proposed SRMC-anchored offer pricing methodology appropriately supports efficient dispatch and market price formation;
- the appropriateness of introducing permitted flexibility margins around benchmark-efficient SRMCs; whether bidding flexibility margins should be symmetric or asymmetric relative to benchmark-efficient SRMCs;
- whether bidding flexibility margins should differ by technology type, operational characteristics, flexibility capability, or other relevant market considerations;
- appropriate safeguards required to mitigate excessive market power during the transitional market phase; and
- how permitted flexibility margin mechanisms should evolve as market competition matures over time.

More clarity is needed on the composition of the short-run marginal cost (SRMC) composition. For instance, "emissions = carbon + environmental",<sup>21</sup> this does not say exactly what costs will and will not be considered here, and this must be clarified as a crucial aspect of Eskom's variable costs, particularly in relation to the fixed compliance costs<sup>22</sup> that will be built into the fixed generation capacity costs. Further, the cost of emissions ought to include external health and climate impact costs.

According to the Framework "NERSA may progressively review and refine flexibility margin methodologies, technology differentiation approaches, and associated market power mitigation measures as market conditions evolve".<sup>23</sup> It is necessary:

- that these NERSA powers are rather captured and aligned with the stipulated obligations and powers in the draft SAWEM Code and Rules – not in a framework document;
- that more detail be provided on objective triggers and timeframes for these reviews; and
- that mandatory public participation and information disclosure requirements are provided

<sup>21</sup> Para 6.6.3, the Framework.

<sup>22</sup> Para 4.9.5, the Framework.

<sup>23</sup> Para 6.12, the Framework.

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| <b>Part 4: Strike Price Framework</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>Question 4: NERSA's objective is to establish a benchmark pricing reference that supports vesting contract settlements, market monitoring, and transitional revenue benchmarking without distorting market-based dispatch and price formation principles. Stakeholders are invited to comment on:</p> <ul style="list-style-type: none"> <li>• whether the proposed strike price methodology provides a credible and transparent benchmark pricing reference;</li> <li>• whether the separation between strike prices and SRMC-based offer prices appropriately preserves market integrity;</li> <li>• whether the proposed benchmark energy quantity methodology is appropriate; and</li> <li>• whether there are risks of material divergence between benchmark pricing references and realised market outcomes during transition.</li> </ul> | <p>Very limited information is provided on how exactly the strike price for each power station will be made up. Therefore, it is currently not possible to comment on the extent to which the strike price methodology is credible, and we do not agree that the methodology is transparent.</p> <p>The lack of sufficient detail here, also gives rise to a concern of double counting – as it is not clear whether components of the strike price will already have been accounted for under other pricing components.</p> <p>There are risks of material divergence between benchmark pricing references and realised market outcomes during transition. NERSA's review, assessment and monitoring duties must be much</p> |

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | more clearly set out in the SAWEM Code and Rules.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Part 5: Revenue Recovery Principles and Risk Allocation</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>Question 5: NERSA's objective is to establish a transitional framework that balances revenue stabilisation, market exposure, operational incentives, and competitive market development during the transition toward competitive electricity market arrangements. Stakeholders are invited to comment on:</p> <ul style="list-style-type: none"> <li>• whether the proposed revenue recovery and vesting settlement principles appropriately balance market exposure and transitional revenue stabilisation;</li> <li>• whether the Framework provides sufficient clarity regarding the distinction between benchmark pricing references and guaranteed revenue recovery;</li> <li>• whether the proposed allocation of market, operational, and volume risks remains appropriate during transition; and</li> <li>• whether the Framework may unintentionally distort market incentives, liquidity development, or investment behaviour.</li> </ul> | <p>As stated above, there is a concern that the Framework's methodology allows for double counting – with, for example, provision for capacity payments and ancillary services to be recovered a second time as components of the Generator Required Revenue Benchmark. NERSA should publish a detailed and itemised list showing which costs are recovered through which mechanism. Failure to address this could affect market incentives and investment behaviour.</p> <p>The allocation of risks is not appropriate. The Framework should not focus on how to maximise revenue stability for Eskom's incumbent generators, but rather on establishing a minimum, reasonable level of transitional protection necessary to cushion consumers, avoiding unnecessary distortion of competitive price signals. Examples from countries like the Philippines<sup>24</sup> show us that challenges arise where generators are not sufficiently exposed to operational and commercial risks, particularly in a market with significant concentration among incumbent players – like Eskom. This risks distorting market signals.</p> |
| <b>Part 6: Vesting Contracts</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

<sup>24</sup> 'Learning from Developing Country Power Market Experiences: The Case of the Philippines', Hugh Rudnick and Constantin Velasquez  
<https://documents1.worldbank.org/curated/en/428331548771494859/pdf/WPS8721.pdf>.

**Question 6:** NERSA’s objective is to establish vesting contract arrangements that support transitional revenue stabilisation, mitigate structural market power, preserve market-based dispatch and pricing principles, and facilitate orderly market development during transition. Stakeholders are invited to comment on:

- whether the proposed vesting settlement structure appropriately balances revenue stabilisation and market exposure;
- whether the symmetric settlement mechanism appropriately moderates excessive market volatility and market power risks;
- whether the proposed vesting volume approaches and reduction pathways are appropriate for the South African market transition context; and
- whether additional safeguards, governance mechanisms, or implementation considerations should be incorporated into the Framework.

Section 9 presents different options for vesting volumes ranging from 100% to 60% during the “initial phase” however it gives no indication of how long the initial phase is nor when volumes can be revised and reduced.

Further, the Framework notes that “vesting volumes may progressively reduce over time as: market liquidity improves; competition increases; market participation broadens; and wholesale market pricing matures”.<sup>25</sup> It states further that “NERSA may periodically review vesting arrangements and associated reduction pathways at the conclusion of applicable control periods or other defined review intervals established under the Framework.”<sup>26</sup> However, no defined review intervals or control periods are established by the Framework.

Much more clarity is needed on the review process to be undertaken by NERSA – as well as clarity on the objective triggers, timeframes and control periods. The Framework does not even stipulate timeframes for the vesting arrangements or the review interval periods. All of this information should be clarified in order to provide much needed certainty. The review process to be conducted by NERSA should be addressed in the SAWEM Code and/or Rules. Not in a Framework document.

<sup>25</sup> Para 9.28, the Framework.

<sup>26</sup> Para 9.39, the Framework.

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>Without any clarity on the timeframes for the vesting contract period; NERSA's reviews; or objective triggers, there will be a high level of uncertainty regarding Eskom's transition to a market. In these circumstances, it is unlikely that market participation will broaden, and a number of objectives sought to be realised by reducing the vesting volumes over time, will not be met.</p> <p>As for additional safeguards or governance mechanisms that should be incorporated into the Framework, the Framework must require the publication of <i>all</i> vesting-related information and decisions, including the publication of the vesting contracts, and a mandatory requirement to make the vesting contracts available for public comment before approval and signature.</p> |
| <b>Part 8: Long-term Monitoring Role and Market Power Mitigation</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>Question 8: NERSA's objective is to establish appropriate transitional market monitoring and market power mitigation mechanisms that support transparent, stable, and competitive market development during transition. Stakeholders are invited to comment on:</p> <ul style="list-style-type: none"> <li>• the adequacy of the proposed market monitoring and oversight mechanisms; the proposed approach to market power mitigation during transition;</li> <li>• the adequacy of the proposed transitional risk monitoring framework;</li> <li>• the proposed approach to vesting and transition monitoring; and</li> </ul> | <p>This section of the Framework refers to a number of powers and functions of NERSA, which are not in fact stipulated in sufficient detail, or at all, in the Framework. For example, the Framework's stipulated objectives for NERSA to: assess transitional risks<sup>27</sup> and preserve efficient and transparent market operation.<sup>28</sup> The Framework says nothing about NERSA's functions or duties in this regard how monitoring must happen; how often etc.</p>                                                                                                                                                                                                                                                                                                               |

<sup>27</sup> Para 11.1.2, the Framework.

<sup>28</sup> Para 11.1.5, the Framework.

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| <ul style="list-style-type: none"> <li>whether additional governance safeguards or monitoring mechanisms should be incorporated into the Framework.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>While we certainly do not object to the monitoring powers that are mentioned and loosely framed in the Framework (we strongly support detailed monitoring) much more detail is needed. Further, these mechanisms should sit within the SAWEM Code and/or Market Rules, not in a Framework document. Consequently, none of the measures proposed in this framework for monitoring or risk management are adequate. Without more clarity or detail, it is not possible to assess the likely effectiveness of the risk mitigation measures, which currently are far too vague.</p> <p>In order to fulfil the market power monitoring functions listed in 11.9 and 11.10, NERSA will need to have access to sufficient information in real-time. It is crucial that the Market Code and Rules grant NERSA the necessary data access powers to properly fulfil these functions.</p> |
| <b>Part 9: Downstream Vesting Contract Distributor / Retail</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>Question 9: The CPA will sign a five-year vesting contract with Eskom distribution and other retailers, using an agreed-upon wholesale active energy price as the strike price (i.e. the current NERSA-regulated energy tariff).</p> <p>a) The downstream vesting contract has been proposed for five years. What are the opinions of the stakeholders?</p> <p>b) What are the risks if the period is extended beyond five years?</p> <p>c) CPA will be crucial in finalizing the vetting contract; stakeholders must express their opinions both during and after the transition period.</p> | <p>Much will depend on the measures that are put in place to prepare licensed distributors and to protect consumers once the transition period comes to an end. This is more important than the question of the duration of the transition period and these provisions and measures must be phased in and run concurrently.</p> <p>We assume question (d) ought to refer to paragraphs 12.6 – 12.13 (not paragraph 14)? In theory there is</p>                                                                                                                                                                                                                                                                                                                                                                                                                                    |



d) Stakeholders are asked to comment on the proposed distribution vesting contracts principles described in paragraphs 14.6 through 14.13.

nothing objectionable about these principles in paragraph 12, but all will depend on their implementation and the more nuanced details on how these arrangements are set up and implemented.

43. Please feel free to contact us should you have any questions or wish to engage with us on the Framework.

Yours faithfully

A handwritten signature in black ink, appearing to read "Lisa Makaula", written over a light blue rectangular background.

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Lisa Makaula

**The Green Connection**

A handwritten signature in black ink, appearing to read "Nicole Loser", written over a light blue rectangular background.

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Nicole Loser

**Law for Energy Transitions Africa**

A handwritten signature in black ink, appearing to read "Yegeshni Moodley", written over a light blue rectangular background.

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Yegeshni Moodley

**groundWork**