



*Guidelines for Regulating Cross-border Power
Trading in Southern Africa*

April 2010

Table of Contents

Background to RERA Regulatory Guidelines.....	5
Guideline 1: Regulator’s Powers and Duties in Cross-border Trading.....	7
Guideline 2: Working to Ensure Compatible Regulatory Decisions	8
Guideline 3: Timing of Regulatory Interactions for Proposed Cross-border Transactions.....	9
Guideline 4: Licensing Cross-border Trading Facilities, Imports and Exports.....	12
Guideline 5: Approving Cross-border Agreements in Importing Countries	14
Guideline 6: Approving Cross-border Agreements in Exporting Countries	17
Guideline 7: Approval Cross-border Agreements in Transit Countries	19
Guideline 8: Approving Transmission Access and Pricing and Ancillary Services.....	21
Guideline 9: Promoting Transparency in the Regulation of Cross-border Trading	22

Definitions and Acronyms

AFREC	African Energy Commission
Ancillary services	Reactive power, reserves, black start capability and other services that are required to maintain transmission and distribution system reliability and security
Benchmarking	Comparing the terms of alternative supply options taking into account the factors listed in Guideline 5.6(c)
Competitive tendering	A process where bids are received from alternative suppliers and the best supply option(s) are selected to negotiate supply agreements
Control area services	Services provided by a system operator within an electrical system bounded by interconnection metering and telemetry, such as generation scheduling and frequency regulation
Cross-border agreements	Any agreement relating to cross-border trade in electricity including any power purchase or supply agreement, transmission or interconnection agreement or agreement for the provision of ancillary services, excluding the SAPP day ahead market (DAM)
EoI	Expression of Interest
IPP	Independent power producer
Licence	Any document (including a concession) issued by a government or Regulator that allows an entity to undertake the relevant activity within its jurisdiction relating to importing or exporting electricity
NEPAD	New Partnership for Africa's Development
PPA	Power Purchase Agreement
Pre-application meeting	Meeting between the Regulator and the parties to a cross-border transaction prior to an application for a regulatory decision being submitted
Price-regulated customers	Consumers of electricity whose prices are set or controlled by a regulator and cannot negotiate electricity prices directly with their supplier
Regulated tariffs	Charges for electricity supply from a utility to price-regulated customers

Regulator	The authority responsible for making regulatory decisions, including the authority's officers and staff. The Regulator may be an agency independent of Government, or may be a Government Department or Ministry or Minister
RERA	Regional Electricity Regulators' Association of Southern Africa
RfQ	Request for pre-qualifications
RfP	Request for proposals
SADC	Southern Africa Development Community
SAPP	Southern African Power Pool
Traders	Parties to cross-border transactions
Transit country	A country through which in a cross-border transaction electricity is transported from a buyer to a seller, both of which are located in other countries
Transmission services agreement	An agreement relating to connection to, construction or use of or interconnection with a transmission or distribution system or systems located in one or more countries, including a transit country
Unsolicited offer	A process where a seller approaches a buyer with an offer to supply, without being selected through a competitive tendering process

Background to RERA Regulatory Guidelines

The Southern African Development Community (SADC) Ministers responsible for Energy recognised the importance of establishing the Regional Electricity Regulators Association of Southern Africa (RERA) as a formal association of electricity regulators at a meeting in Maseru, Lesotho on 12 July 2002 and it was officially launched in Windhoek, Namibia on 26 September 2002. The Association was established under the terms of the SADC Protocol on Energy (1996), the SADC Energy Co-operation Policy and Strategy (1996), the SADC Energy Sector Action Plan (1997), the SADC Energy Activity Plan (2000) and in pursuit of the broader initiative of the New Partnership for Africa's Development (NEPAD) and the African Energy Commission (AFREC).

RERA has the following three strategic objectives:

- i) *Capacity Building & Information Sharing*: Facilitate electricity regulatory capacity building among Members at both a national and regional level through information sharing and skills training
- ii) *Facilitation of Electricity Supply Industry Policy, Legislation and Regulations*: Facilitate harmonised ESI policy, legislation and regulations for cross-border trading, focusing on terms and conditions for access to transmission capacity and cross-border tariffs
- iii) *Regional Regulatory Cooperation*: Deliberate and make recommendations on issues that affect the economic efficiency of electricity interconnections and electricity trade among members fall outside national jurisdiction, and to exercise such powers as may be conferred on RERA through the SADC Energy Protocol.

RERA has also received a mandate from SADC to help address major regulatory constraints in the enabling environment for cross-border power trading (Record of 29th Meeting of SADC Energy Ministers, 30 April 2008, Kinshasa). These Proposed Guidelines for Regulating Cross-border Power Trading in Southern Africa ("the Regulatory Guidelines") are relevant to the three strategic objectives of RERA and the mandate issued to RERA by SADC. RERA considers the Guidelines to represent best regulatory practice in the SADC region at this time. The Guidelines have benefited from a systematic review of regulatory and policy practices to promote cross-border trading in four other regions of the world.¹ The Guidelines have also benefited from discussions with individual RERA members on existing or emerging regulatory rules and practices affecting cross-border trading.

RERA considers that the Regulatory Guidelines provide useful tools for national governments and agencies that regulate activities in the electricity sector. The Regulatory Guidelines will help to provide an enabling framework for cross-border trade and investment in infrastructure that would reduce some of the current uncertainties deterring investment and undermining efforts to improve security of supply through cross-border trading. The Regulatory Guidelines represent a first concrete step to harmonising national regulatory systems to encourage large cross-border transactions by ensuring that regulatory arrangements in the region are compatible. Guidelines are provided for national regulators in importing, exporting and transit countries.

¹ See Castalia Strategic Advisors, *International Experience with Cross-border Power Trading*, Report to the Regional Electricity Association of Southern Africa and the World Bank, September 2009. This report is available online at the RERA website (www.rerasadc.com).

The Regulatory Guidelines are accompanied by a separate report (“the Regulatory Guidelines Manual”) that explains the purpose, scope and proposed implementation of the guidelines. The rationale for each guideline is also described in more detail in the Regulatory Guidelines Manual. The Regulatory Guidelines Manual can be thought of as a “user’s guide” to the Regulatory Guidelines.²

In considering the roles that national regulators play in cross-border trading, the work completed by RERA must take account of the responsibilities of other regional bodies—the SADC Secretariat and the Southern African Power Pool (SAPP). Consideration should also be given to the SADC energy sector instruments³ and SAPP governing documents.⁴ To ensure consistency and completeness between the powers and duties of national regulators and the regional responsibilities of the SADC Secretariat and SAPP, RERA proposes to collaborate actively with the SADC Secretariat and SAPP to develop documents and processes that would complement the Guidelines. RERA’s goal is **not** regulation for the sake of regulation, but instead regulation that will make it easier for national utilities and private investors to undertake economic cross-border transactions that improve security of supply throughout the region.

The Regulatory Guidelines will apply to cross-border transactions. However, it is expected that regulatory review of small cross-border transactions (for example, those involving less than 20MW of power and having agreements providing for trading for less than 1 year) would be more streamlined and less extensive than provided for in the Guidelines. The rationale for focusing on larger and longer-term transactions is that such transactions are likely to have a more direct impact on decisions to invest in new generation and transmission facilities. RERA believes that investment in such facilities (or the lack thereof) is the primary and overriding concern of the SADC countries.

Given the focus of the Guidelines on major, long-term cross-border transactions, the Guidelines are not intended to apply to trading on the SAPP day ahead market (DAM). RERA also recognizes that SAPP is implementing other important regional power trading initiatives, such as a revised methodology for transmission pricing and ancillary services. The Guidelines allow these initiatives to become operational, and require national regulators to give substantial weight to SAPP proposals when ultimately making the regulatory decisions required by their empowering legislation.

The Regulatory Guidelines are written in the form of principles, rules and procedures that could be adopted for reviewing major, long-term imports and exports of power. However, as a RERA document, the Regulatory Guidelines do not have a formal legal status over the decisions of individual national regulators. For these Regulatory Guidelines to be given legal effect, national regulators will need to implement the guidelines in their own country. RERA intends to help its members implement the Guidelines, and to propose any changes to the Guidelines that are deemed to be beneficial from experience applying the Guidelines. RERA will also provide the SADC Ministers responsible for energy with an independent and objective evaluation on implementation of the Guidelines after 18 months.

² The Regulatory Guidelines Manual is available for downloading from the RERA website (www.rerasadc.com)

³ SADC energy sector instruments include the Protocol on Energy and Energy Cooperation Policy & Strategy

⁴ SAPP governing documents include the Inter-Governmental Memorandum of Understanding (IGMOU), the Inter-Utility Memorandum of Understanding (IUMOU), Agreement Between Operating Members (ABOM) & the Operating Guidelines (OG)

Guideline 1: Regulatory Powers and Duties in Cross-border Trading

- 1.1 When considering cross-border electricity trading, the Regulator will act within the powers and duties prescribed in national legislation.
- 1.2 Typically it is expected that the Regulator would be responsible for making the following types of decisions within the Regulator's country in relation to cross-border electricity transactions (the "regulatory decisions"):
 - (a) Issuing licences to entities that will be engaged in cross-border electricity trading, such as electricity generators and transmission companies, traders, importers and exporters (Guideline 4);
 - (b) Approving the terms of power purchase agreements (PPAs) and transmission wheeling agreements in cross-border electricity imports and exports (Guidelines 5, 6 and 7) as they relate to technical system security issues ;
 - (c) Approving the recovery of the costs of electricity imports through the tariffs charged to price-regulated customers (Guideline 5);
 - (d) Approving agreements to export electricity by parties that supply price-regulated customers to safeguard their interests (Guideline 6);
 - (e) Approving transmission wheeling agreements in transit countries where the transmission provider supplies price-regulated customers to safeguard their interests. (Guideline 7);
 - (f) Mandating access to transmission and distribution facilities for cross-border electricity trading in accordance with national legislation and transmission licence conditions (Guideline 8); and
 - (g) Approving domestic and cross-border transmission charges (Guideline 8).

Each of these decisions and their purpose is addressed in the Regulatory Guidelines. To avoid creating incompatible national regulatory systems that will impede or block beneficial cross-border transactions within SADC, the Regulator should give substantial weight to the decisions and recommendations of regional organisations recognised by SADC, such as RERA and SAPP.

- 1.3 In making any regulatory decision listed in Guideline 1.2, the Regulator will have regard to all relevant Government policies such as power sector market structure, security of supply, desirable levels of imports or exports, restrictions on resource use, system or integrated resource planning, generation mix, open non discriminatory transmission access, climate change mitigation strategies, competition requirements, private sector participation, cost reflective tariffs and economic empowerment mandates.
- 1.4 Where Government policy is unclear on any matter concerning cross-border electricity trading, the Regulator will formally request policy guidance from the Government, and if no guidance is received then the Regulator will act in a manner that is consistent with the Regulator's powers and duties in national legislation.

Guideline 2: Ensuring Compatible Regulatory Decisions

- 2.1 When making regulatory decisions, the Regulator will take into account regulatory decisions and practices in the other countries involved in a cross-border transaction, and will work to ensure compatibility between regulatory decisions made in other countries relating to cross-border transactions.
- 2.2 To promote the compatibility of national regulatory policies directly affecting cross-border electricity trading, when making regulatory decisions the Regulator will take into account any decisions or recommendations of regional organisations, such as RERA and SAPP. The decisions or recommendations of regional organisations that are likely to be particularly relevant include but are not limited to:
 - (a) SAPP operating agreements between member countries and other agreements for regional system operations and control area services;
 - (b) Transmission pricing;
 - (c) The operation of balancing markets;
 - (d) The provision of ancillary services;
 - (e) The design and implementation of grid codes; and
 - (f) Procedures and information requirements for evaluating the physical effects of major new transmission and generation facilities on the operation of the interconnected regional grid.

Guideline 3: Timing of Regulatory Interactions in Cross-border Trading

Pre-application meetings

- 3.1 Either or both of the parties to a cross-border transaction may request meetings with the Regulator prior to submitting a formal application for a regulatory decision (a “pre-application meeting”). The purpose of a pre-application meeting will be to:
 - (a) Share information so that the Regulator can develop a full and accurate understanding of all relevant terms and conditions of the proposed cross-border agreements;
 - (b) Enable the parties to obtain a better understanding of the principles advocated and supported by the Regulator;
 - (c) Enable the parties to obtain high-level guidance and general opinions from the Regulator on relevant terms and conditions in the proposed cross-border agreements and licences; and
 - (d) Provide an opportunity for the Regulator to indicate whether any terms and conditions are unlikely to gain final regulatory approval.
- 3.2 To ensure that pre-application meetings are useful to all parties, the Regulator may require any of the parties to the proposed transaction to complete questionnaires or tables and to provide information designed to provide accurate and complete information about the price, risk and other elements of a proposed transaction.
- 3.3 For all regulatory decisions and meetings, the Regulator may choose to hire one or more independent experts to improve the Regulator’s understanding of the proposed transaction. The Regulator must be satisfied that the independent expert has no conflict of interest that could interfere with an objective evaluation of the proposed transaction.
- 3.4 Any guidance or opinion offered by the Regulator in a pre-application meeting will not be binding or legally enforceable. Decisions of the Regulator will only be made after the Regulator receives a formal application from a party to the cross-border transaction.
- 3.5 The Regulator will not participate in any direct negotiations between the parties on the conditions and terms of cross-border agreements. However, at the joint request of the parties, the Regulator may attend the negotiations as an observer. The Regulator may instead decline to join the negotiations as an observer. If the Regulator joins negotiations as an observer, any statements of the Regulator will not be binding or legally enforceable and the Regulator’s silence on any issue will not indicate approval of the terms negotiated.
- 3.6 In all interactions before a formal application for a regulatory decision has been received, the Regulator will maintain strict confidentiality of all matters discussed, unless disclosures are approved by both parties. Once a formal application has been received the Regulator may disclose any information received, unless any of the parties asks the Regulator to maintain the confidentiality of any information for reasons of commercial sensitivity. The Regulator will decide whether the request for confidentiality is justified.

Meetings between Regulators

- 3.7 Prior to making any decision on cross-border trading, the Regulator will consider whether meetings with regulators in other countries affected by the proposed cross-border transaction would be valuable, and the Regulator will be available to meet with other regulators to:
- (a) Share information (subject to any confidentiality requirements), so that each Regulator can develop a full and accurate understanding of all terms and conditions of proposed cross-border agreements; and
 - (b) Discuss any principles or substantive terms and conditions where there may be a difference of opinion, in order to reach a consistent or common approach to their decisions on the cross-border transaction.

Regulatory decisions

- 3.8 The party to a cross-border transaction based in the Regulator's country will lodge an application with the Regulator for any of the regulatory decisions listed in Guideline 1.2. The Regulator will make regulatory decisions following a process that gives an opportunity to all parties to the transaction to make representations. The expected timing of a regulatory decision will be specified at the start of a regulatory decision making process.
- 3.9 If an application has been lodged pursuant to Guideline 3.8, the Regulator will review the application and make a decision to:
- (a) Approve the application; or
 - (b) Reject the application; or
 - (c) Recommend changes to specific terms and conditions in the application or the relevant cross-border agreement that would result in the application being approved.
- 3.10 A licence or approved cross-border agreement may permit a specified degree of flexibility for the applicant to agree to specified changes to the cross-border agreement, provided that the Regulator is satisfied that the intent of the regulatory decision would not be undermined by the flexibility or any permitted change. Where the parties to the cross-border agreement require flexibility to change terms after the relevant regulatory decision is made, the desired level of flexibility should be detailed in the application with reasons supporting the need for flexibility.
- 3.11 To streamline the regulatory approvals process, Regulators will permit parties to a cross-border transaction to make parallel or related applications for more than one regulatory decision at the same time. For example, the Regulator may make a decision on a generation licence application at the same time that a decision is made on an application to approve transmission access, services and pricing. Decisions on power purchase agreements will generally include a decision on pass-through of power purchase costs to price-regulated customers. Alternatively, a phased approach to regulatory approvals may be adopted. For example, an application initially may be made for a generation licence which the regulator

may approve on condition that approvals are obtained within a certain period for the associated power purchase and transmission services agreements. Some of these decisions may be within the purview of another Regulator, in which case relevant regulatory decisions and conditions will be communicated to that Regulator.

Guideline 4: Licensing Cross-border Trading Activities, Imports and Exports

- 4.1 Subject to national legal requirements, the Regulator will issue licences for generation, transmission, importing and exporting activities for cross-border power trading if the Regulator is satisfied that:
- (a) The application complies with the applicable legal and regulatory framework;
 - (b) The applicant has demonstrated the technical expertise to construct, operate and maintain any associated power facility in compliance with any national grid code;
 - (c) The applicant has demonstrated sufficient financial resources to properly construct, operate and maintain the facility or to undertake the cross-border trading activity; and
 - (d) Issuing a licence would not undermine national security of electricity supply because:
 - (i) The resources that will be used for the proposed cross-border transaction(s) are not needed to meet forecast domestic demand, or if the resources are needed to meet forecast domestic demand there is no immediate prospect of a domestic buyer or buyers entering into transactions that are, in aggregate, of comparable size and on similar terms to the proposed cross-border transaction(s)
 - (ii) The technical impacts of the activity on the regional and national power system have been studied, and are considered to be acceptable to the Regulator, having taken all necessary advice from the appropriate national authorities and SAPP.

The decision to issue a license will be made public, along with a summary of the license conditions and terms.

- 4.2 The licence will impose conditions to comply with prescribed planning and technical standards set out in national policies, any national grid code, and other legal or regulatory instruments.
- 4.3 The licence will impose requirements to provide certain information to the Regulator:
- (a) That will be required for the Regulator to make other regulatory decisions in relation to the cross-border transaction;
 - (b) To enable the Regulator to monitor compliance with the law or the terms of the licence;
 - (c) To notify the Regulator of any major problems that may result in termination or renegotiation of a cross-border agreement;
 - (d) To notify the Regulator of any subsequent change to a cross-border agreement that affects the approved tariff or risk allocation under the cross-border transaction; and
 - (e) As per the reasonable request of the Regulator.

- 4.4 Where feasible, the Regulator will avoid duplicating requirements in licence procedures that have already been demonstrated through competitive tendering processes or are specified in cross-border agreements.
- 4.5 The decision of the Regulator to issue a licence for cross-border trading activities will not automatically confer regulatory approval of any associated power purchase agreements or transmission services agreements, or guarantee that any associated costs will be reflected in regulated tariffs.
- 4.6 Once approved, the licence will be valid for a specified time period in which the project must commence construction and file a schedule for completion, or the licensed activity must become operational. The licensee may re-apply to the Regulator to extend this time period.
- 4.7 The licence for most cross-border trading activities will be expressed to expire when the associated cross-border agreement terminates. Where the regulator proposes to terminate a licence before the expected expiry date of an associated cross border agreement, the Regulator will:
- (a) Base its intention to terminate on grounds stated in the licence for termination
 - (b) Inform the applicant of the reasons for the proposal to terminate the licence and the actions that the applicant can take to remedy the termination event;
 - (c) Give the applicant an appropriate opportunity to make representations;
 - (d) Provide the applicant with reasonable time to remedy the termination event;
 - (e) Give final notification to the applicant prior to terminating the licence.

Guideline 5: Approving Cross-border Agreements in Importing Countries

- 5.1 The Regulator in an importing country will review the following cross-border agreements:
- (a) The power purchase agreement (PPA);
 - (b) Transmission services agreements; and
 - (c) Any other agreements required to properly evaluate the PPA and transmission services agreements.
- 5.2 To review the impacts of the cross-border agreements on security of supply, the Regulator will confirm that:
- (a) The technical impacts of the transaction on the regional or national power system have been studied, and are considered to be acceptable to the Regulator, having taken advice, where appropriate, from the relevant national authorities and SAPP;
 - (b) The transactions conforms to the SAPP operating agreements between member countries;
 - (c) The consequences of power system emergencies and the failure or inability of either of the parties to perform the obligations according to the terms of cross-border agreements are clearly addressed;
 - (d) Transmission capacity in any transit country is available to provide a physical and contractual transmission path for transporting the electricity traded on a firm basis; and
 - (e) Any explicit government restrictions on the quantity of power that can be imported are honoured.
- 5.3 If the buyer supplies price-regulated customers, the Regulator will require that the remaining provisions of this Guideline are met to ensure that regulated tariffs reflect reasonable costs of supply. The remaining provisions of this Guideline do not apply to cross-border transactions where the buyer does not serve price-regulated customers.
- 5.4 If the Regulator decides that a cross-border transaction has followed a satisfactory competitive tendering process for the cross-border supply of electricity, the tariffs under the cross-border agreements will be presumed to provide value for money. Regulators will expect competitive tendering processes for cross-border transactions with the following characteristics:
- (a) A well-defined product (for example, capacity, energy or ancillary services);
 - (b) Specifications for the tendering process that would be likely to lead to several competing bids;
 - (c) Existing preferences or pre-specifications of risk allocations; and
 - (d) The existence of available transmission capacity so that few or no additional transmission investments are needed.

- 5.5 When considering whether a cross-border transaction has followed a satisfactory competitive procurement process, the Regulator will consider whether the following factors are present:
- (a) The conditions of the tender are clear and do not unreasonably favour one bidder over other possible bidders;
 - (b) The number of parties that pre-qualify and submit bids for tender evaluation is sufficient to achieve a competitive outcome; and
 - (c) The selection process is fair, and the selection of a preferred bidder is consistent with any pre-specified selection criteria.

The evaluation of offers in a competitive procurement process by the buyer may be on the basis of price and non-price characteristics, such as transmission impacts, timing of project delivery, power plant performance requirements and re-dispatch implications on other resources. The competitive procurement process may include post-tender negotiations with one or more of the short-listed bidders. The Regulator may make use of independent experts to assist it in reviewing the process used by the buyer. The Regulator must also take account of the requirements of any relevant public procurement laws and rules and the decisions of government bodies responsible for implementing these laws and rules.

- 5.6 Where a cross-border transaction results from an unsolicited offer, or from a process where the competitiveness of the procurement is in doubt, the Regulator will benchmark the terms of the cross-border agreements to ensure that the cross-border transaction qualifies as a satisfactory procurement that provides value for money. Regulators will expect unsolicited offers accompanied by extensive negotiations for cross-border transactions with some or all of the following characteristics:

- (a) High up-front development costs for the seller;
- (b) Unique specifications on project size, timing or technology that would make direct competition from other projects unlikely or unviable;
- (c) High uncertainty about the full dimensions of risks associated with the project and the risk allocation that will be acceptable to the buyer and seller and the relevant governments;
- (d) Significant investments in new transmission facilities required to transmit the power; and/or
- (e) The need for government support agreements, such as inter-governmental memoranda of understanding.

To benchmark a cross-border transaction, the Regulator will compare the value for money offered by the transaction to alternative supply options taking into account the factors listed in Guideline 5.7(c).

- 5.7 The Regulator will allow the costs of power purchases and transmission services from a cross-border transaction to be reflected in regulated tariffs where:
- (a) The cross-border agreements have been executed and have come into force in accordance with the terms and conditions reviewed and found acceptable by the Regulator;

- (b) The cross-border transaction is shown to be needed to either:
 - (i) Meet forecast peak demand;
 - (ii) Meet forecast energy demand;
 - (iii) Meet demand in a particular location, given the physical characteristics of the transmission network; or
 - (iv) Meet a specified system reliability purpose, such as through the provision of cross-border ancillary services.
- (c) The price of power to be purchased represents value for money compared to alternative supply options (including any generation investments proposed by the buyer), taking into account factors including:
 - (i) The relevant physical characteristics of the cross-border transaction, including size, time of delivery and diversity of supply;
 - (ii) The level of reliability and interruptibility to be provided by the cross-border transaction;
 - (iii) The risks allocated between the seller, the buyer, the buyer's price-regulated customers, and the relevant transmission or distribution company, which should accord with the principle that risks are allocated to the party best able to control the risk;
 - (iv) Explicit government policies on power generation technologies, such as climate change and fuel diversification objectives; and
 - (v) Explicit government policies on the ownership of generation assets, such as targets for private investment in generation.

The Regulator may make use of an independent expert to assist it in evaluating whether the price of power to be purchased represents value for money compared to alternative supply options, through long-run marginal cost studies or other benchmarking exercises. Alternatively, the Regulator may follow other processes to ensure value for money.

- 5.8 If the Regulator finds that a cross-border agreement provides value for money, the buyer will be entitled to have all costs incurred in complying with the cross-border agreement reflected in its regulated tariffs. The Regulator will include costs in estimates of revenue requirements used to establish tariffs for price-regulated customers. Since projected costs are unlikely to equal actual incurred costs, the Regulator will establish a balancing account that will be used to make periodic increases or decreases to tariffs to align actual and forecast costs.

Guideline 6: Approving Cross-border Agreements in Exporting Countries

- 6.1 The Regulator in an exporting country will review the following cross-border agreements:
- (a) The power purchase agreement (PPA);
 - (b) Transmission services agreements and wheeling agreements;
 - (c) Any other agreements that it requires to properly evaluate the PPA and transmission wheeling agreements.
- 6.2 To review the impacts of the cross-border agreements on security of supply, the Regulator will confirm that:
- (a) The resources that will be used for export are not needed to meet forecast domestic demand, or if the resources are needed to meet forecast domestic demand there is no immediate prospect of a domestic buyer or buyers entering into transactions that are, in aggregate, of comparable size and on similar terms to the proposed cross-border transaction;
 - (b) The technical impacts of the transaction on the regional or national power system have been studied, and are considered to be acceptable to the Regulator, having taken advice, where appropriate, from the relevant national authorities and SAPP;
 - (c) The transaction complies with the requirements of any applicable SAPP planning and operating agreements;
 - (d) The consequences of power system emergencies and the failure or inability of either of the parties to perform the obligations according to the terms of cross-border agreements are clearly addressed
 - (e) Any explicit government policies on the quantity of power that can be exported, or the terms of any export sales, will be honoured.
- 6.3 If the seller supplies price-regulated customers, the Regulator will require that the remaining provisions of this Guideline are met to ensure that regulated tariffs reflect reasonable costs of domestic supply. The remaining provisions of the Guideline do not apply to cross-border transactions where the seller does not serve price-regulated customers.
- 6.4 The Regulator will review cross-border agreements for export to ensure that:
- (a) The sale will not adversely affect the ability to:
 - (i) Meet forecast peak demand of national customers;
 - (ii) Meet forecast energy demand of national customers;
 - (iii) Meet demand in a particular location within the exporting country, given the physical characteristics of the transmission network;
 - (iv) Meet a specified system reliability purpose, such the provision of ancillary services; or

- (v) Supply domestic customers in a manner that does not subsidise the cross-border electricity transaction.
 - (b) The price or tariff for the cross-border sale:
 - (i) Requires the payments that will recover all of the capital costs of providing the power for export; and
 - (ii) Requires payments that cover at least the variable costs of providing the power for export; or
 - (iii) Contains an alternative payment structure that is shown to be more beneficial to national price-regulated customers than set out in Guideline 6.4(b)(i)-(ii).
- 6.5 The Regulator will check whether the financial accounts of the export transaction are kept separate from the financial accounts of the regulated activities of a utility that serves price-regulated customers. This type of ring-fenced accounting follows regulatory best practice to protect price-regulated customers from providing cross-subsidies to the export transaction.
- (a) If separate financial accounts are maintained and price-regulated customers have not provided funding for the export transaction or the facilities that make the export transaction possible, the Regulator will allow the exporter to retain any export revenues earned from the export transaction. In these circumstances, the Regulator will not allow any financial losses from the export transaction to be reflected in regulated retail tariffs.
 - (b) If the financial accounts are not kept separate from the financial accounts of the regulated domestic supply and the tariffs of price-regulated customers have helped to fund the export transaction, the Regulator will specify the portion of the export transaction revenues earned that will be set-off against the revenue requirements of the utility for serving price-regulated customers.

Guideline 7: Approving Cross-border Agreements in Transit Countries

- 7.1 The Regulator in a transit country will review any transmission services agreements entered into between a transmission company located in the transit country and the buyer or the seller for the elements prescribed in Guideline 7.2.
- 7.2 To review the impacts of transmission services agreements on security of supply, the Regulator will confirm that:
- (a) The technical impacts of the transaction on the regional or national power system have been studied, and are considered to be acceptable to the Regulator, having taken advice, where appropriate, from the relevant national authorities and SAPP;
 - (b) The transaction complies with the requirements of any applicable SAPP planning and operating agreements;
 - (c) The consequences of power system emergencies and the failure or inability of any of the parties to perform the obligations according to the terms of the transmission wheeling agreements are clearly addressed;
 - (d) Transmission capacity in the transit country is available to provide a physical transmission path for transporting the purchased power on a firm basis; and
 - (e) Any explicit government restrictions on the quantity of power that can be imported to or exported from the transit country are honoured.
- 7.3 If the transmission company in the transit country supplies price-regulated customers, the Regulator will require that the remaining provisions of this Guideline are met to ensure regulated tariffs reflect the reasonable costs of domestic transmission services. The remaining provisions of the Guideline do not apply to transmission services agreements where the transmission company in the transit country does not serve price-regulated customers.
- 7.4 The Regulator in a transit country will approve transmission services agreements where:
- (a) The cross-border transaction will not adversely affect the ability of the transmission company to:
 - (i) Meet forecast peak demand of national customers;
 - (ii) Meet forecast energy demand of national customers;
 - (iii) Meet demand in a particular location within the transit country, given the physical characteristics of the transmission network; or
 - (iv) Meet a specified system reliability purpose, such the provision of ancillary services
 - (v) Supply domestic customers in a manner that does not subsidise the cross-border electricity transaction.
 - (b) The price or tariff for the relevant transmission services:

- (i) Requires payments to be made that cover all capital costs associated with the relevant transmission services; and
- (ii) Requires payments to be made that cover at least the variable costs of the relevant transmission services; or
- (iii) Contains an alternative payment structure that is shown to be more beneficial to national price-regulated customers than set out in Guideline 7.4(b)(i)-(ii).

Guideline 8: Approving Transmission Access, Transmission Pricing and Ancillary Services

- 8.1 The Regulator will oversee access to transmission for cross-border transactions to ensure that access is non-discriminatory to the greatest extent possible under the law.
- 8.2 The Regulator will review transmission services agreements for cross-border transactions to confirm that prices for domestic transmission services and cross-border transmission services reflect the principles referred to in Guideline 8.3.
- 8.3 The Regulator will review transmission prices to ensure that good signals are provided for transmission investment to the extent possible and that cross-subsidies between domestic and cross-border sales are minimised. In particular, the Regulator will check that transmission prices for cross-border transactions:
 - (a) Provide incentives for participants to make economically efficient decisions on the location of new facilities;
 - (b) Recover the costs of transmission facilities associated with cross-border agreements as an essential condition to encourage transmission investment;
 - (c) Are transparent and predictable to encourage participation in transactions that involve separately specified transmission prices;
 - (d) Achieve the greatest possible harmonisation between national and cross-border pricing arrangements; and
 - (e) Do not unnecessarily restrict opportunities for cross-border trading.
- 8.4 The Regulator will use its powers to require that the procurement of ancillary services by system operators and control area services satisfies minimum requirements for national and regional ancillary and control area services. The Regulator will also review the costs of procuring ancillary and control area services to use its powers to require that costs are reasonable in all the circumstances.
- 8.5 In making decisions on the pricing of transmission and ancillary services, the Regulator will consider any relevant rules or recommendations made by SAPP on the regional pricing of transmission and ancillary services.

Guideline 9: Promoting Transparent Regulation of Cross-border Trading

- 9.1 The Regulator will promote transparency in its procedures and processes and in making regulatory decisions by:
- (a) Publishing procedures and criteria used in regulatory reviews and decisions in advance;
 - (b) Notifying relevant parties that an application for a regulatory decision has been made, and affording interested parties an opportunity to make representations;
 - (c) At the same time as a regulatory decision, or after a pre-determined period is announced, the Regulator will publish:
 - (i) A clear statement of the decision;
 - (ii) A description and analysis of all evidence considered;
 - (iii) A summary of views offered by participants to proceedings; and
 - (iv) A full discussion and explanation of the reasons for the decision.
- 9.2 The Regulator will publicly issue a summary of the information used in making regulatory decisions, subject only to limited exceptions where interested parties have shown that breaches in commercial confidentiality would materially prejudice licensees or any of the parties to a cross-border transaction (notwithstanding the other provisions of these Guidelines) or the national interest. The summary will include the prices in the cross-border agreements, a description of how the main risks have been allocated between the parties, and any other relevant information.