

LEGAL REPORT

MUNICIPAL LEGAL FRAMEWORK APPLICABLE TO SMALL- SCALE EMBEDDED GENERATION

prepared for

SUSTAINABLE ENERGY AFRICA NPC

as part of the

MUNICIPAL SUSTAINABLE ENERGY TRANSITION SUPPORT (MSETS) PROJECT

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INTRODUCTION

1 INTRODUCTION

- 1.1 This Report ("**Report**") has been prepared by Cliffe Dekker Hofmeyr Inc. ("**CDH**" or "**we**" or "**our**") for and on behalf of Sustainable Energy Africa NPC ("**SEA**") in order to assess various legal and regulatory issues pertaining to the municipal legal framework applicable to small scale embedded generation ("**SSEG**").
- 1.2 This Report should be read in conjunction with the assumptions, qualifications and limitation of liability provisions set out in Annexure A to this Report.

2 SCOPE OF INSTRUCTION

2.1 Overview of Instruction

We have been instructed to address, *inter alia*, the following questions set out below in order to establish what conditions or procedures relating to the connection and operation of SSEG systems are required to provide municipalities with reasonable legal security that these systems comply with the necessary technical and legal requirements while minimising any disincentives for prospective SSEG customers and the SSEG industry that such requirements may pose.

2.2 Establishing a legally binding set of requirements for SSEG

- 2.2.1 Municipalities use one or more of the following tools to establish a binding legal framework for SSEG systems -
- 2.2.1.1 Council approval and adoption of an SSEG 'requirements' document ("**SSEG Policy**") which typically contains a range of requirements for SSEG systems ("**SSEG Requirements**"). Council adoption is sometimes considered adequate to give the document a legally binding status ("**Council Approval**").
- 2.2.1.2 Electricity by-law amendment – municipalities generally amend their electricity by-law to reflect various requirements of SSEG installations ("**By-law Amendment**").
- 2.2.1.3 Supplemental Contracts – municipalities often require SSEG customers to sign an additional contract to the existing Electricity Supply Contract they have in place with normal customers ("**Supplemental Contracts**").
- 2.2.2 Having regard to the tools used by municipalities described above in establishing a binding legal framework for SSEG systems, this Report will address the following questions –
- 2.2.2.1 Which of the tools used by municipalities are necessary to make the conditions for connection imposed on SSEG customers legally binding?
- 2.2.2.2 What would be the most efficient way to ensure legal standing of SSEG conditions?
- 2.2.2.3 Are both a By-law Amendment and a Supplemental Contract necessary to ensure legal standing?

- 2.2.2.4 If only a Council Approval is adequate to enforce compliance with any document setting out legal and technical requirements for SSEG systems, are subsequent revisions to this document still legally binding on the customer?
- 2.2.2.5 Should a By-law Amendment and/or Supplemental Contracts or similar be considered necessary, what is the essential content required therein to perform their function?

2.3 SSEG system sign-off on commissioning

- 2.3.1 Municipalities apply different conditions in the commissioning process of SSEG systems before they are signed off and allowed to generate and feed electricity onto the municipal distribution grid. The following questions will be addressed in this Report –
- 2.3.1.1 Until the SANS10142-1-2 is released and electricians are certified accordingly, is sign-off by a professional engineer necessary to provide municipalities with sufficient legal assurance regarding the compliance of SSEG systems?
- 2.3.1.2 What legally secure options exist for sign-off that are efficient and lower cost?
- 2.3.1.3 Is any sign-off legally necessary given the other legal agreements and obligations of SSEG customers that municipalities typically put in place? (Supplemental Contract, By-law Amendment, Council Approval etc).

3 STRUCTURE OF THE REPORT

- 3.1 The Report is comprised of the following sections -
- 3.1.1 Introduction.
- 3.1.2 Part A: Legislative and Regulatory Framework Governing Municipalities, Electricity Reticulation and Associated Services.
- 3.1.3 Part B: An analysis of the questions set out in paragraphs 2.2 and 2.3 above.

4 DEFINITIONS

In this Report, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

- 4.1 "**By Law Amendment**" has the meaning given to that term in paragraph 2.2 above;
- 4.2 "**Codes**" means, as applicable, any code in respect of electricity distribution or transmission as published by the NERSA from time to time;
- 4.3 "**Constitution**" means the Constitution of the Republic of South Africa, 1996;
- 4.4 "**Council Approval**" has the meaning given to that term in paragraph 2.2 above;
- 4.5 "**Electrical Installation Regulations**" means the Electrical Installation Regulations, 2009 issued in terms of the OHSA;
- 4.6 "**ERA**" means the Electricity Regulation Act, No. 4 of 2006;
- 4.7 "**Government**" means the Government of the Republic of South Africa, and any of its departments, agencies or other entities that it manages and controls;

- 4.8 "IDP" means the Integrated Development Plan, as contemplated in section 25 of the Municipal Systems Act;
- 4.9 "MSA" means the Local Government: Municipal Systems Act, No. 32 of 2000;
- 4.10 "**Municipal Structures Act**" means the Local Government: Municipal Structures Act, No. 117 of 1998;
- 4.11 "**NERSA**" means the National Energy Regulator of South Africa, established in terms of section 3 of the National Energy Regulator Act, No. 4 of 2004;
- 4.12 "**OHSA**" means the Occupational Health and Safety Act 85 of 1993;
- 4.13 "**SSEG**" means small scale embedded generation;
- 4.14 "**SSEG Policy**" has the meaning given to that term in paragraph 2.2 above;
- 4.15 "**SSEG Requirements**" has the meaning given to that term in paragraph 2.2 above; and
- 4.16 "**Supplemental Contracts**" has the meaning given to that term in paragraph 2.2 above.

PART A

LEGISLATIVE AND REGULATORY FRAMEWORK GOVERNING MUNICIPALITIES, ELECTRICITY RETICULATION AND ASSOCIATED SERVICES

1 MUNICIPAL EXECUTIVE AUTHORITY AND FUNCTIONS

- 1.1 The MSA provides that a municipality is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act.¹
- 1.2 The MSA² establishes that a municipality has all the functions and powers conferred by or assigned to it in terms of the Constitution and must exercise those powers subject to chapter 5³ of the Municipal Structures Act⁴. Section 83 of the Municipal Structures Act refers to the functions and powers of a municipality as being those assigned to it in terms of sections 156 and 229 of the Constitution.
- 1.3 The Constitution empowers a municipality with the executive authority and the right to administer certain local government matters⁵ and any other matter assigned to it by national or provincial legislation.⁶ In terms of section 156(1) of the Constitution these matters are listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution.
- 1.4 The Constitution provides in section 155(6)(a) and (7) and Schedule 4B that electricity reticulation⁷ is a municipal competency. This means that a municipality is responsible for providing electricity reticulation services to the customers within its jurisdiction.
- 1.5 Reticulation is defined under the ERA as "*trading or distribution of electricity and includes services associated therewith.*" Distribution of electricity is defined in the ERA as "*the conveyance of electricity through a distribution power system excluding trading, and "distribute" and "distributing" have corresponding meanings.*"
- 1.6 The electricity reticulation function extends to the obligation on municipalities as licensed distributors to provide open and non-discriminatory access to the municipal distribution system. Accordingly, its electricity reticulation function includes, inter alia, administering the connection of generation systems to the municipal distribution system.
- 1.7 Accordingly, a municipality has the executive constitutional authority to undertake the reticulation of electricity in its jurisdiction and any services associated therewith, which would include providing access to the distribution system.

¹ Act 27 of 1998.

² At section 8 of the Municipal Systems Act.

³ Chapter 5 of the Municipal Systems Act deals with Integrated Development Planning.

⁴ Act 117 of 1998.

⁵ In terms of section 156(4), national and provincial government may assign Part A matters to a municipality under certain circumstances.

⁶ Pursuant to sections 99, 126 and 156(4) of the Constitution, a Cabinet member or member of the provincial Executive Council, as the case may be, may assign any power or function that is to be exercised or performed in terms of an Act of Parliament or a provincial Act, to a Municipal Council. An assignment must be in terms of an agreement between the relevant Executive Council member, Cabinet Member, and the Municipal Council; consistent with the Act in terms of which the relevant power or function is exercised or performed; and takes effect upon proclamation by the President or Premier.

- 1.8 In terms of section 156(5) of the Constitution, a municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions. Electricity reticulation is one of the functions administered by local government.⁸

2 ENACTMENT, ADMINISTRATION AND ENFORCEMENT OF BY-LAWS AND POLICY DOCUMENTS

2.1 By-Laws

- 2.1.1 A by-law is legislation that is passed and enacted by the relevant municipal council. A by-law is enacted to enable a municipality to administer a function which it is empowered to administer, either in terms of the Constitution or where such power is assigned to it in terms of national or provincial legislation.
- 2.1.2 By-laws passed by a municipal council have the same force of law as national legislation and provincial ordinances and the significance of the legislative authority of the municipal councils must be emphasised. By-laws can be enforced by courts of law and offenders can be punished.
- 2.1.3 Section 160 of the Constitution and section 12 of the MSA deals with the required legislative procedure to pass by-laws in municipal councils. This includes, *inter alia*, that by-laws have to be made in accordance with the rules and orders of a municipal council and with a supporting vote of the majority of its members. Furthermore, by-laws cannot be passed without being first published for public comment in a manner that allows the public an opportunity to make representations with regard to the proposed by-law.
- 2.1.4 In terms of section 14(3) of the MSA, any amendment to a by-law is applicable to a municipality only if, and to the extent, adopted by the municipal council. Therefore, in the event that a municipal council wants to amend a by-law, it would have to go through the same process as outlined in section 12(3) of the MSA.

2.2 Policies

- 2.2.1 It is important to note that the purpose of a policy is to provide policy guidelines. Policies are regulated and enforced through the relevant by-laws. Therefore, the by-laws are the instrument used by municipalities to exercise their legislative authority over functions assigned to them under the Constitution as well as national and provincial legislation.
- 2.2.2 Section 4(1)(a) of the MSA provides that a municipal council has the right to govern on its the local government affairs of the local community.
- 2.2.3 A municipal council has the power to make by-laws which prescribe rules and orders for its internal arrangements; its business proceedings; and the establishment, composition, procedure, powers, and functions of its committees. The municipal council will have to adhere to its rules and orders when passing and/or amending a municipal policy.
- 2.2.4 In the event of a local municipality, to the extent that there are no by-laws governing the municipal council, regard would be held to the district municipality in whose jurisdiction the local municipality is located.

2.3 Right to Enact and Administer Municipal By-Laws and Policies

- 2.3.1 The Constitution is the supreme law of South Africa. Any law or conduct inconsistent with

⁸ Section 156(1)(a) of the Constitution.

the Constitution is invalid, and the obligations imposed thereby must be fulfilled. The Constitution confers powers and functions on the national, provincial and local spheres of government and provides that one sphere of government may not assume a power or function conferred on another sphere.⁹ With reference to municipalities, the Constitution states that:

*"A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution."*¹⁰

- 2.3.2 It is noted that subject to section 151(4)¹¹ of the Constitution, a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.
- 2.3.3 Although the Constitution confers the authority on municipalities to pass by-laws in respect of the matters listed in Part B of Schedule 4 and Part B of Schedule 5, the same authority has also been conferred upon the national and provincial governments. Municipalities, therefore, share the power to pass legislation on the matters listed in Schedules 4B and 5B with the national and provincial governments.
- 2.3.4 While municipalities share the power to pass legislation on the matters listed in Schedules 4B and 5B with the national and provincial governments, it is important to note that they do not share the power to administer and implement these laws. This is because the power conferred upon the national and provincial governments to pass laws on Schedule 4B and 5B matters is limited by sections 155(6)(a) and 155(7) of the Constitution.
- 2.3.5 Section 155(6)(a) of the Constitution provides in this respect that
- "...[e]ach provincial government ... by legislative and other measures, must provide for the monitoring and support of local government in the province..."*
- 2.3.6 Section 155(7) of the Constitution provides in this respect that
- "...[t]he national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedule 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1)."*
- 2.3.7 Accordingly, while the national and provincial spheres of government are entitled to pass laws regulating the local government matters set out in Schedule 4B and Schedule 5B, they are not entitled to legislate on Schedule 4B and Schedule 5B matters. Instead, they are entitled to pass only framework legislation dealing with, for example, national standards, minimum requirements, monitoring procedures.
- 2.3.8 Generally, national legislation would prevail over provincial legislation, subject to certain exceptions.¹² Municipal by-laws which a municipality may make and administer for the effective administration of the matters which it has the right to administer and powers

⁹ Section 41(1)(f) of the Constitution

¹⁰ Section 151(3) of the Constitution.

¹¹ In terms of section 151(4) of the Constitution, The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions

¹² In terms of section 146(5) of the Constitution, provincial legislation prevails over national legislation where sections 146(2) and 146(3) do not apply.

concerning a matter reasonably necessary for, or incidental to, the effective performance of its function are invalid to the extent that they contradict national or provincial legislation, unless such national or provincial legislation compromise or impede a municipality's ability or right to exercise its powers or perform its functions or has been rendered inoperative by a court order.¹³

3 DOCUMENTS REQUIRED FOR THE ADMINISTRATION OF ELECTRICITY SERVICES

3.1 Requirement to make a by-law to regulate its executive authority to administer electricity services

3.1.1 The Constitution provides that a municipality may, *inter alia*:

3.1.1.1 administer matters over which it has executive authority;¹⁴

3.1.1.2 make and administer by-laws;¹⁵ and

3.1.1.3 exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.¹⁶

3.1.2 Municipalities are therefore empowered in terms of section 156(2) of the Constitution to make and administer by-laws for the effective administration of the matters which it has the right to administer. The MSA defines a by-law as "*legislation passed by the council of a municipality binding on the municipality and on the persons to whom it applies.*"

3.1.3 The council of a municipality has the right to govern on its own initiative the local government affairs of the local community.¹⁷ The executive and legislative authority of a municipality is exercised by the council of the municipality, and the council takes all the decisions of the municipality subject to delegations of powers as per section 59 of the MSA.¹⁸

3.1.4 In terms of section 4(2) of the MSA, the council of the municipality has a duty to exercise the municipality's executive and legislative authority in the best interests of the community.

3.1.5 In terms of section 11 of MSA, a municipality exercises its executive authority by:

3.1.5.1 developing and adopting policies, plans, strategies and programmes, including setting targets for delivery;

3.1.5.2 implementing applicable national and provincial legislation and making by-laws;

3.1.5.3 providing municipal services to the local community, or appointing appropriate service providers in accordance with the criteria and process set out in section 78;

3.1.5.4 monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the municipality;

3.1.5.5 preparing, approving and implementing its budgets;

3.1.5.6 imposing and recovering rates, taxes, levies, duties, service fees and surcharges on

¹³ Sections 156(3), 151(4), and 149, of the Constitution.

¹⁴ Section 156(1) of the Constitution.

¹⁵ Section 156(2) of the Constitution.

¹⁶ Section 156(5) of the Constitution.

¹⁷ Section 151(3) of the Constitution.

¹⁸ Section 11(1) of the MSA.

fees, including setting and implementing tariff, rates and tax and debt collection policies;

- 3.1.5.7 monitoring the impact and effectiveness of any services, policies, programmed or plans; and
- 3.1.5.8 passing by-laws and taking decisions on any of the above-mentioned matters.
- 3.1.6 Any decision taken by a municipal council must be recorded in writing (e.g. a Council Approval).¹⁹
- 3.1.7 As a municipality has the executive constitutional authority over the reticulation of electricity and associated services within its jurisdiction, and as it may administer matters over which it has executive constitutional authority, it may make policies and enact by-laws relating to the reticulation of electricity.
- 3.1.8 Historically, municipalities have not made use of their legislative authority to pass by-laws when it comes to energy. Instead, the preferred approach appears to be by way of developing policies, plans and strategies. Unfortunately, policies, plans and strategies do not have the same "teeth" that by-laws do. What this means is that policies, plans and strategies do not impose the same legal obligations created by by-laws.
- 3.1.9 A municipal policy needs to be incorporated into local legislation through by-laws in order to enforced and sanctions imposed on those who transgress the provisions of the by-law.
- 3.1.10 Authorised municipalities therefore have the duty to make-by laws in order to effectively administer their electricity reticulation function which includes, inter alia, the connection of generation systems to the distribution system and to develop the requisite policies relating to the connection of generation systems to its distribution system.

3.2 **Requirement to make electricity services policies relating to, inter alia, the connection of generation systems to the municipal distribution system**

- 3.2.1 Section 27 of the ERA sets out the duties of municipalities regarding reticulation and provides that:

"Each municipality must exercise its executive authority and perform its duty by-

(a) complying with all the technical and operational requirements for electricity networks determined by the Regulator;

(b) integrating its reticulation services with its integrated development plans;

(c) preparing, implementing and requiring relevant plans and budgets;

(d) progressively ensuring access to at least basic reticulation services through appropriate investments in its electricity infrastructure;

(e) providing basic reticulation services free of charge or at a minimum cost to certain classes of end users within its available resources;

(f) ensuring sustainable reticulation services through effective and efficient management and adherence to the national norms and standards contemplated in section 35:

¹⁹ Section 11(4) of the MSA

(g) regularly reporting and providing information to the Department of Provincial and Local Government, the National Treasury, the Regulator and customers;

(h) executing its reticulation function in accordance with relevant national energy policies; and

(i) keeping separate financial statements, including a balance sheet of the reticulation business..

3.2.2 Section 35 of the ERA stipulates that NERSA may make rules, guidelines and codes of conduct and practice relating to inter alia:

3.2.2.1 the operation, use and maintenance of transmission and distribution power systems;

3.2.2.2 technical and safety standards; and

3.2.2.3 any other ancillary or administrative matter appropriate for the proper implementation of the ERA.

3.2.3 The Distribution Code²⁰ is a document approved by NERSA and prepared in accordance with section 35 of the ERA. The Distribution Code is applicable to all users of the distribution system including distributors, which would include a municipality if it is a licensed distributor for the purpose of the Distribution Code. As a licensed distributor, there may be provisions in the distribution licence itself that require the distributor to comply with all codes, laws and other applicable regulations.

3.2.4 Paragraph 3.2 of the Distribution Code states that:

3.2.4.1 upon receipt of the application for connection to the distribution system, the distributor shall advise whether the applicant can be connected to the existing system and / or what technical improvements are required to enable the new connection;

3.2.4.2 the distributor shall provide an offer to connect and if accepted by the customer ²¹, both parties shall enter into a connection agreement which shall include information such as project planning data, inspection, testing and commissioning programs, electrical diagrams and any other information the distributor may deem necessary to proceed with the processing of the application for connection; and

3.2.4.3 if the application for connection has been declined, the distributor shall advise the customer on the alternative options available for connection to make the connection successful.

3.2.5 The Distribution Code provides that the municipality is obliged to provide reasons for declining an application for connection insofar as the municipality must provide an applicant with the technical information and improvements required to connect their system and of the alternative options available to rectify an unsuccessful application.

3.2.6 Paragraph 4 of the Distribution Code sets out the responsibilities of distributors and stipulates in paragraph 4(1) that the distributor shall make capacity available on its networks and provide open and non-discriminatory access for the use of this capacity to all customers including embedded generators.

²⁰ South African Distribution Code – Version 6 – July 2014.

²¹ "Customer" is defined in the Distribution Code as, "A person or legal entity that has entered into an agreement with a Distributor for the provision of distribution services. An entity may be an Embedded Generator, another Distributor, an end-use customer (including generators), and international customer, a retailer or a reseller."

- 3.2.7 Each distributor is required in terms of paragraph 4(2) to make available to the customers the "Customer Connection Information Guide"²² which shall cover as a minimum:
- 3.2.7.1 the process to follow when applying for supply at the specific distributor;
 - 3.2.7.2 information requirements of the distributor from the customer to affect an appropriate connection; and
 - 3.2.7.3 the process and related timeframes which follow the application.
- 3.2.8 Paragraph 4(3) of the Distribution Code provides that the distributor has to respond to the request for connection within the period specified in the NRS047.
- 3.2.9 Paragraph 4(4) of the Distribution Code provides further that the distributor must enter into a connection agreement with the customer prior to the actual connection to the distribution system. This requirement is repeated in paragraph 8.1(1).
- 3.2.10 The Distribution Code is a national standard which, according to section 27 of the ERA, must be adhered to by a municipality in exercising its municipal functions. Paragraph 3.1 of the Distribution Code also provides that upon receiving an application for connection, a distributor must comply with all other connection requirements relevant to the connection process specified in the Distribution Code.
- 3.2.11 Paragraph 8.2 details additional responsibilities for distributors and provides in paragraph 8.2(2) that the distributor shall treat all applications for connection to the distribution system by potential embedded generators in an open and transparent manner that ensures equal treatment for all applicants.
- 3.2.12 Further, pursuant to section 35 of the ERA, NERSA has published the Grid Connection Code for Renewable Power Plants ("**RPP**") connected to the electricity Transmission PV System ("**TS**") or the Distribution PV System ("**DS**") in South Africa ("**RPP Code**"). The primary objective of the RPP Code is to specify minimum technical and design grid connection requirements for RPPs connected to or seeking connection to the South African electricity transmission system or distribution system. The RPP Code states that it shall be used together with other applicable requirements of the code such as the South African Grid Code as compliance criteria for RPPs connected to the TS and the DS.
- 3.2.13 Having regard to the above, it follows that municipalities have the duty to develop electricity services policies relating to, *inter alia*, the connection of generation systems to the distribution system which policy should provide the application procedure and information requirements of the distributor from the customer to affect an appropriate connection as a minimum.

²² Defined in the Distribution Code (Glossary and Definitions) as: "A document prepared and published by the Distributor which contains all information regarding an application to connect to the relevant Distributor network."

PART B
LEGAL REPORT

CHAPTER 1: ESTABLISHING A LEGALLY BINDING SET OF REQUIREMENTS FOR SSEG

1 INTRODUCTION

Having regard to the 'tools' used by municipalities described in the preamble to this Report in establishing a binding legal framework for SSEG systems, this Chapter addresses the questions set out below.

2 QUESTIONS

2.1 Which of the tools used by municipalities are necessary to make the conditions for connection imposed on SSEG customers legally binding?

2.1.1 Municipalities are authorised in terms of the Constitution and the ERA to provide electricity reticulation services (that is, metropolitan municipalities, district municipalities (where all of the local municipalities have not been authorised) and authorised local municipalities). The electricity reticulation function extends to the obligation on municipalities as licensed distributors to provide open and non-discriminatory access to the municipal distribution system. Accordingly, the electricity reticulation function includes, *inter alia*, administering the connection of generation systems to the municipal distribution system.

2.1.2 As noted above, in terms of the MSA and the Distribution Code read together with the ERA, municipalities have a duty to develop policies relating to the connection of generation systems to the distribution system regardless of the installed capacity of the generation system, which policy should provide the application procedure and information requirements of the distributor from the customer to effect an appropriate connection as a minimum.

2.1.3 In terms of the MSA, any decision taken by a municipal council must be recorded in writing (e.g. a Council Approval).²³ Accordingly, any such policy (e.g. the SSEG Policy) must be adopted by the municipal council and the decision to adopt the policy would be recorded in writing.

2.1.4 Whilst the Constitution provides that municipality's *may* make and administer by-laws for the effective administration of the matters which it has the right to administer, in terms of section 4(2) of the MSA, the municipal council has a duty to exercise the municipality's executive and legislative authority.

2.1.5 The purpose of a municipal electricity services policy is to provide policy guidelines. Therefore, the SSEG Policy would only be a guideline relating to the implementation of the municipalities' electricity reticulation services in the relevant jurisdictional area. The policy itself cannot impose the same legal obligations on the customers as created by by-laws. The policy should be regulated and enforced through a by-law, being the instrument used by mandated municipalities to exercise their legislative authority over electricity services.

2.1.6 Accordingly, it is our view that a municipality has a duty to make a by-law so as to enable it to effectively administer its executive authority to provide electricity reticulation services

²³ Section 11(4) of the MSA

and to enforce the SSEG Policy. A by-law passed by a municipal council has the same force of law as national legislation and provincial ordinances and can be enforced by courts of law.

- 2.1.7 We understand that municipalities require SSEG customers to sign a Supplemental Contract, being an amendment to the existing electricity supply contract between the SSEG customer and the municipality. Given that there will need to be a billing reconciliation of the customers' account with the municipality, a Supplemental Contract is required to be signed between the relevant distributor and the SSEG customer setting out, inter alia, the process for adjusting the buyer's electricity bill taking into account that a portion of the SSEG customers electricity is generated by a SSEG system and not supplied by the municipality.
- 2.1.8 The Supplemental Contract is not required in order to legally enforce the SSEG Policy from a contractual perspective. The contractual requirements in this regard will be contained in the connection agreement required to be entered into between the SSEG and the customer in accordance with the Distribution Code and the ERA. However, the Supplemental Contract is necessary from a contractual perspective in order to regulate the billing reconciliation and invoice adjustments.
- 2.1.9 We are therefore of the view that the following 'tools' are required in law in order to ensure that the conditions for connection imposed on SSEG customers legally binding and enforceable -
- 2.1.9.1 a by-law enacted in terms of Section 156(2) of the Constitution, or a by-law amendment to an existing by-law to the extent that an electricity by-law has already been made by the relevant municipality;
- 2.1.9.2 a policy approved by the municipal council setting out the SSEG Requirements and the application process for connection of the SSEG system to the municipal distribution system; and
- 2.1.9.3 a connection agreement entered into between the SSEG customer and the licensed distributor which shall include information such as project planning data, inspection, testing and commissioning programs, electrical diagrams, technical compliance criteria, and any other information the distributor may deem necessary to proceed with connecting the SSEG system.
- 2.1.10 A Supplemental Contract will be required in addition to the above 'tools' in order to contractually regulate the billing reconciliation and invoice adjustment. It is not required in terms of any legislation.
- 2.1.11 It is however noted that there is the option of combining the Supplemental Contract and the connection agreement into one contract, namely a "Contract for Connection of an Embedded Generator". In this instance, the contract would govern the connection of the SSEG system to the municipal distribution system and the export of electricity to the municipal distribution system, which electricity is purchased by the relevant municipality. In this instance, the customer's electricity account with the municipality shall be credited for electricity generated by the SSEG system and exported to the distribution system in the amounts reflected in the municipality's annual tariff relating to the import and export of electricity for small scale embedded generation. However, to the extent that electricity generated by the SSEG system is wheeled to a third party purchaser, a separate Supplemental Contract would have to be concluded between the relevant municipality and the ultimate purchaser of the electricity.

- 2.1.12 We further note that it is possible for municipalities to consider implementing the Contract for Connection of an Embedded Generator as general terms and conditions that are made available on their website or at their offices. The application form for connection completed by the customer would then be in a form that would bind the customer to the general terms and conditions and could be attached to the Contract for Connection of an Embedded Generator as the relevant schedule. The application form would need to include the following wording as well as the information to be completed in the form of Schedule 1:

"Acceptance of Terms and Conditions

The Customer acknowledges that it has read and understood the General Terms and Conditions: Contract for Connection of Embedded Generator and that by signing this application form, the Customer agrees to be bound by the General Terms and Conditions: Contract for Connection of Embedded Generator, should approval for the Embedded Generator be granted by the municipality. A copy of the General Terms and Conditions: Contract for Connection of Embedded Generator can be found on [insert website] or a copy is available on request. Any amended terms and conditions found on the aforementioned website [insert website] will form part of the terms and conditions of the General Terms and Conditions: Contract for Connection of Embedded Generator, to which terms the Customer agrees to be bound. The information provided in this Application Form also will form part of the General Terms and Conditions: Contract for Connection of Embedded Generator."

2.2 What would be the most efficient way to ensure legal standing of SSEG conditions?

- 2.2.1 As noted above, an SSEG Policy would be a guideline relating to the implementation of the municipalities' electricity reticulation services in the relevant jurisdictional area whilst the by-law regulates the exercise of the municipalities exercise legislative authority over electricity reticulation services.
- 2.2.2 Accordingly, in order to ensure that the SSEG Policy is legal binding and enforceable, the SSEG Policy should be issued pursuant to the relevant by-law governing electricity reticulation services for the municipality in question.

2.3 Are both a By-law Amendment and a Supplemental Contract necessary to ensure legal standing?

- 2.3.1 As noted in paragraph 2.1 above, the Supplemental Contract is not required in order to legally enforce a SSEG Policy from a legislative perspective and it should not contain any additional legal requirements relating to the physical connection of the SSEG system to the distribution system. The Supplemental Contract is required for contractual billing reconciliation purposes.
- 2.3.2 A municipality has a duty to make a by-law so as to enable it to effectively administer its executive authority to provide electricity reticulation services and to enforce the SSEG Requirements.
- 2.3.3 The By-Law Amendment and the Supplemental Contract therefore serve different purposes. However, both documents, as well as the connection agreement, would be required for the purpose of facilitating the connection process.

- 2.4 **If only a Council Approval is adequate to enforce compliance with any document setting out legal and technical requirements for SSEG systems, are subsequent revisions to this document still legally binding on the customer?**
- 2.4.1 This would have to be determined on a case by case basis having regard to the relevant internal rules and/or by-laws governing the powers and procedures of the applicable municipal council. A municipal council has the power to make by-laws which prescribe rules and orders for its internal arrangements; its business proceedings; and the establishment, composition, procedure, powers, and functions of its committees.
- 2.4.2 In the event of a local municipality, to the extent that there are no by-laws governing the municipal council, regard would be held to the district municipality is whose jurisdiction the local municipality is located.
- 2.4.3 Given that the MSA does not make provision for the procedures and powers of a municipal council to amend a policy document issued pursuant to a by-law, in the absence of anything to the contrary contained in the internal rules regulating the powers of the municipal council, the municipal council should, when delegating authority to any person to administer the SSEG Policy, enable such person to amend the SSEG Policy without having to refer the matter back to the municipal council to approval. This would be subject to the condition that any such amendment to the SEG Policy does not contradict the by-law governing the electricity services.
- 2.4.4 The internal rules/and or by-laws governing the internal arrangements, business proceedings, establishment, composition, procedures, powers, and functions of the municipal council should make provision for whether or not Council Approval is required each and every time there is an amendment to the SSEG Policy or if the person delegated with the power to administer the SSEG Policy is empowered to amend the SSEG Policy without having to refer the matter back the municipal council for resolution.
- 2.4.5 Regard should also be had to the IDP of the applicable municipality in determining whether or not the Council Approval is sufficient to cover any amendments to the policy. The IDP is the product of the integrated development planning process undertaken by a municipality pursuant to section 23 of the MSA. The IDP is, therefore, the principle strategic planning, budgeting, management and decision-making tool in a municipality
- 2.5 **Should a By-law Amendment and/or Supplemental Contract or similar be considered necessary, what is the essential content required therein to perform their function?**
- 2.5.1 The MSA defines a by-law as "*legislation passed by the council of a municipality binding on the municipality and on the persons to whom it applies.*"
- 2.5.2 The by-law will be the legal instrument used by municipalities to exercise their legislative authority to administer electricity reticulation services. The by-law should, at a minimum, make provision for the following to ensure effective administration and that legal sanctions are enforceable by the municipality –
- 2.5.2.1 the functions administered by the municipality pursuant to the by-law, namely electricity reticulation services which includes regulating the connection of a SSEG system to the municipality's distribution system;
- 2.5.2.2 the delegation of powers and duties and state that the municipality may delegate any power or duty that has been conferred on the municipality to consider and approve or reject applications for connection to the municipality's distribution system in terms of the by-law to a suitably qualified official, agent or service providers of the municipality;

- 2.5.2.3 adherence by any customer with any SSEG Policy issued by the municipality in terms of the by-law relating to the connection and installation of SSEG system;
- 2.5.2.4 the penalties imposed in the event that the SSEG customer fails to comply with the SSEG Policy setting out the SSEG Requirements²⁴;
- 2.5.2.5 the electricity generation equipment provided by a customer in terms of any regulations or for his own operational requirements cannot be connected to any installation or the distribution system without the prior written approval of the municipality.
- 2.5.3 It is important to note that any by-law issued by a municipality is authoritatively subordinate to, and must comply with, the national legislation governing electricity, being the ERA. A municipality has no legal mandate to impose conditions relating to the provision of electricity reticulation services that are in contradiction to the provisions of any national legislation (such as the OHSA and the ERA). For example, to the extent that a customer is required to obtain a generation licence from NERSA, a municipality cannot waive this requirement. There is no provision in law that exempts a customer that is a net consumer from having to obtain or hold a generation licence. In terms of the ERA, only if the provisions of Schedule 2 of the ERA apply will a customer be exempt from having to hold a generation licence.
- 2.5.4 From a legal perspective, the SSEG Policy should give guidance regarding the municipality's requirements and application process for connecting all forms of SSEG. In accordance with the requirements of the Distribution Code, the SSEG Policy must set out–
- 2.5.4.1 the process to follow when applying for connection at the specific distributor;
- 2.5.4.2 information requirements of the distributor from the customer to affect an appropriate connection; and
- 2.5.4.3 the process and related timeframes which follow the application.
- 2.5.5 Paragraph 8.2 of the Distribution Codes provides that the distributor has to treat all applications for connection to the distribution system by potential embedded generators in an open and transparent manner that ensures equal treatment for all applicants. Therefore, the SSEG Policy should stipulate the conditions required to be satisfied by any applicant in order for municipality to consider and approve the connection pursuant to the requirement in the by-law.
- 2.5.6 The following minimum requirements should be set out in the SSEG Policy -
- 2.5.6.1 The process to be followed when applying for connection as well as related timeframes which follow the application. Upon receipt of the application for connection to the distribution system, the distributor shall advise whether the applicant can be connected to the existing system and/ or what technical improvements are required to enable the new connection.²⁵
- 2.5.6.2 Information requirements of the distributor from the customer to affect an appropriate connection i.e. capacity, locations, technical specifications.
- 2.5.6.3 Requirements on the SSEG customer to hold a generation licence or provide proof that the SSEG customer has registered the SSEG system with NERSA and is exempt from

²⁴ In this regard it is noted that under the ERA, licensed distributor are required to enforce any instruction received from NERSA to disconnect any SSEG system that does not comply with the law.

²⁵ Paragraph 3.2 of the Distribution Code

having to hold a generation licence in terms of Schedule 2 to the ERA.

- 2.5.6.4 A connection agreement entered into between the licensed distributor and the SSEG customer as required in terms of the Codes. The technical information provided as part of the application for connection should be included as annexures to the connection agreement.
- 2.5.6.5 Compliance with the technical and safety standards set out in the Codes and any technical requirements which are particular to the distribution network of the municipality.²⁶
- 2.5.6.6 A certificate of compliance that the installation and all the installed equipment comply with the national and international regulations and legislation.²⁷

²⁶ We cannot advise on the technical requirements to be complied with in terms of the Distribution Code. Technical advice should be sought in this regard.

²⁷ Paragraph 6.1(3) of the Distribution Code continues that the customer shall, on request, provide the distributor with test certificates, prior to commissioning, of the protection system/s that are installed at the point of interface with the distributor.

CHAPTER 2

SSEG SYSTEM SIGN-OFF ON CONNECTION/COMMISSIONING

1 INTRODUCTION

1.1 Background

1.1.1 We understand that there is currently no national standard covering wiring of SSEG systems and that SANS10142-1 does not cover such systems. There is a draft SANS10142-1-2 in circulation that is specifically intended to provide such coverage but is not yet finalised and it is uncertain as when it will be published and whether or not it will be published in the same form as the current draft. In addition, it is noted that training for registered electricians will need to be developed and then training courses run before they can sign off SSEG systems according to the SANS10124-1-2. Accordingly, there is likely to be a delay as to when any such certified electricians are available in the marketplace or any clarity is obtained on the legal requirements.

1.1.2 We further understand that in the absence of the abovementioned SANS10142-1-2 certified electricians, most municipalities currently require a registered professional engineer ("Pr.Eng") or professional technical engineer to sign off SSEG systems on the connection. From the municipality's perspective this sign-off is considered to pass the liability on to the Pr.Eng. However, no training or specific SSEG certification of such persons is required. Such sign-off is typically expensive and could be a prohibiting factor particularly for the smaller sized SSEG systems, contributing to the significant numbers of SSEG customers ignoring the formal municipal approval process. Some consider that this requirement for Pr.Eng or Pr. Tech Eng sign-off is unnecessarily cautious.

1.2 Questions

1.3 Having regard to the above, the following questions will be addressed in this Chapter 2 –

1.3.1 Until the SANS10142-1-2 is released and electricians are certified accordingly, is sign-off by a professional engineer necessary to provide municipalities with sufficient legal assurance regarding the compliance of SSEG systems?

1.3.2 What legally secure options exist for sign-off that are efficient and lower cost?

1.3.3 Is any sign-off legally necessary given the other legal agreements and obligations of SSEG customers that municipalities typically put in place (Supplemental Contract, By-law Amendment, Council Approval etc)?

2 LEGISLATIVE REQUIREMENTS

2.1 ERA

The ERA requires that municipal distribution licence holders need to adhere to the ERA²⁸ and comply with all the technical and operational requirements for electricity networks determined by NERSA²⁹, such as the Distribution Code.

2.2 Distribution Code

2.2.1 Section 14 of the ERA provides that NERSA may make any licence subject to conditions relating to, *inter alia*, compliance with health, safety and environmental standards and requirements and compliance with any regulation, rule or code made under the ERA. As a licensed distributor, a municipality would be subject to the conditions in the distribution licence which should stipulate that the distributor must comply with all codes, laws and other applicable regulations.

2.2.2 Since the Distribution Code is applicable to the municipality as a licensed distributor, the municipality must comply with its provisions in terms of section 27 of the ERA as described above. Paragraph 4(7) of the Distribution Code provides that the distributor must maintain the distribution system in accordance with good industry practice and NRS 082. Paragraph 6.1(3) of the Distribution Code provides that the customer shall, on request, provide the distributor with test certificates, prior to commissioning, of the protection system/s that are installed at the point of interface with the distributor.

2.2.3 Similarly, a municipality must comply with the provisions of the Operating Code which provides *inter alia*, that the distributor is responsible for the safe and reliable operation of the distribution system.

2.2.4 The Distribution Code also provides that the distributor may participate in the final inspection and testing of customer equipment and facilities to be connected to its network.

2.2.5 With regard to testing the Distribution Code provides that the distributor must maintain the distribution system in accordance with good industry practice and NRS 08230. Accordingly, certain testing has to be undertaken before allowing the customer to connect to the distribution system.

2.3 OHS Act

2.3.1 The Electrical Installation Regulations, which are published under section 43 of the OHS Act, regulates the approvals required for the design and connection of an electrical installation. References to Regulation in this section of the Report shall be to a Regulation of the Electrical Installation Regulations.

2.3.2 An electrical installation is defined as follows:

"electrical installation" means any machinery, in or on any premises, used for the transmission of electricity from a point of control to a point of consumption anywhere on the premises, including any article forming part of such an electrical installation irrespective of whether or not it is part of the electrical circuit, but excluding -

(a) *any machinery of the supplier related to the supply of electricity on the premises;*

²⁸ Section 18(1) of the ERA.

²⁹ Section 27(a) of the ERA.

³⁰ Paragraph 4(7) of the Distribution Code.

(b) *any machinery which transmits electrical energy in communication, control circuits, television or radio circuits;*

(c) *an electrical installation on a vehicle, vessel, train or aircraft; and*

(d) *control circuits of 50 V or less between different parts of machinery or system components, forming a unit, that are separately installed and derived from an independent source or an isolating transformer"*

2.3.3 Given that the definition excludes "*any machinery of the supplier related to the supply of electricity on the premises*" the SSEG system itself is not considered to be an electrical installation for purposes of the Electrical Installation Regulations and as such, a certificate should not be required for the commissioning of the SSEG system in terms of the Electrical Installation Regulations. However, it is understood that the electrical wiring connecting the SSEG system to the distribution system would presumably fall within the definition of an electrical installation.

2.3.4 With regard to Regulation 7(4), where any addition or alteration has been affected to an electrical installation for which a certificate of compliance was previously issued, the user or lessor of such electrical installation shall also obtain a certificate of compliance for at least the addition or alteration.

2.3.5 Regulation 8(2) goes on to provide that, no person shall connect or permit the connection of any completed or partially completed electrical installation to the electricity supply unless it has been inspected and tested by a "registered person" and a certificate of compliance for that electrical installation has been issued.

2.3.6 Having regard to the above, the question then is whether or not a 'registered person' for the purpose of certifying the connection to the distribution system in terms of Regulation 5(5) has to be a Pr.Eng.

2.3.7 A registered person is defined as follows in the Electrical Installation Regulations:

"registered person" means a person registered in terms of -

(a) *regulation 11; or*

(b) *regulation 9 of the Electrical Installation Regulations, 1992, as an electrical tester for single phase, an installation electrician or a master installation electrician, as the case may be".*

2.3.8 Regulation 11(2) provides that a registered person has to have *sufficient knowledge of the rules applicable to electrical installations* in the category for which the application is being made, and have *appropriate practical experience in respect of electrical installation, verification and certification of the construction, testing and inspection of the type of electrical installation for which the application is being made* and has to be *registered as an electrical tester for single phase, an installation electrician, or a master installation electrician, as the case may be.*

2.3.9 Regulation 11(2) does not specify that a registered person has to be a Pr.Eng.

2.3.10 Further, with regard to the design and construction of the electrical installation, regulation 5(5) provides that where the voltage exceeds 1 kV, a person deemed competent in terms of paragraphs (b), (c) or (d) of the definition of a 'competent person' in regulation 1 of the General Machinery Regulations, 1988 or a person registered in a professional category in terms of the Engineering Profession Act, 2000, shall approve the design of that part of an

electrical installation.

2.3.11 A "Competent Person" is defined in the General Machinery Regulations as –

- "(a);
- (b) *has obtained an engineering diploma in either the mechanical or electrotechnical (heavy current) fields with an academic qualification of at least T3 or N5, or of an equivalent level, and who subsequent to achieving such qualification has had not less than two years' practical experience in the operation and maintenance appropriate to the class of machinery he is required to supervise;*
- (c) *is a graduate engineer and has had not less than two years' post-graduate practical experience in the operation and maintenance appropriate to the class of machinery he is required to supervise and who has passed the examination on the Act and the regulations made thereunder, held by the Commission of Examiners in terms of Regulation E5(2) of the regulations published under Government Notice R929 of 28 June 1963; or*
- (d) *is a certificated engineer."*

2.3.12 Professional category in terms of the Engineering Profession Act refers to a professional engineer, professional engineering technologist, professional certificated engineer or a professional engineering technician.³¹

2.3.13 In the event that the intention was for a Pr.Eng to sign off on the connection of the electrical installation, it stands to reason that Regulation 8(2) should then have referred to a Competent Person in the same manner as Regulation 5(5) rather than a separate category of registered persons.

2.3.14 Regulation 5(3) provides that items of an electrical installation not covered by an incorporated health and safety standard, and the conductors between the point of supply and the point of control, shall be installed in accordance with the by-laws or regulations of the supplier concerned. It is understood that this has been interpreted to mean that a municipality is entitled to prescribe that the 'registered person' must be a Pr. Eng given that there are currently no 'rules applicable to electrical installations in the category for which the application is being made' as provided for in Regulation 11(2). It is however noted that Regulation 5(3) relates to the design and construction of the electrical installation and refers to health and safety standards. This is distinct from the issue of a certificate of compliance under Regulation 8(2). It is noted that Regulation 5(3) does therefore, not constitute a legal basis or obligation upon which a municipality can require that a Pr.Eng issue the certificate of compliance required in terms of Regulation 8(2).

2.4 Registered Person

2.4.1 As noted above, a 'registered person' is a person that:

- 2.4.1.1 has sufficient knowledge of the rules applicable to electrical installations in the category for which the application is being made, and
- 2.4.1.2 has appropriate practical experience in respect of electrical installation, verification and certification of the construction, testing and inspection of the type of electrical installation for which the application is being made; and
- 2.4.1.3 has to be registered as an electrical tester for single phase, an installation electrician,

³¹ Section 18(1)(a) of the Engineering Profession Act 46 of 2000.

or a master installation electrician, as the case may be.

- 2.4.1 Regulation 11 deals with the application for registration as a registered person and provides that applications to be a registered person shall be made to the chief inspector. The chief inspector is an officer in the Department of Labour. In terms thereof, any natural person that satisfies the chief inspector that he or she meets the requirements set out in paragraph 2.4.1.1 and 2.4.1.2 above, shall be registered as an electrical tester for single phase, an installation electrician, or a master installation electrician, as the case may be. The chief inspector shall furnish a registered person with the appropriate certificate of registration and enter such registration into the national database.
- 2.4.2 Regulation 11(4) provides that a registered person shall on request produce his or her certificate of registration to an inspector, an approved inspection authority for electrical installations, a supplier or any person to whom he or she intends to issue a certificate of compliance.
- 2.4.3 Accordingly, to the extent that an electrical tester for single phase, an installation electrician, or a master installation electrician, as the case may be, is registered as a registered person in accordance with Regulation 11 for the category in which the application for electrical installation is being made, that person is qualified to issue a certificate of compliance referred to in terms of Regulation 8(3).
- 2.4.4 Furthermore, to the extent that the Pr. Eng is not a registered person as provided for above, the Pr.Eng is prohibited from issuing a certificate of compliance in terms of Regulation 9(1).
- 2.5 Obligations and Liability**
- 2.5.1 Regulation 2 provides that the user or lessor of an electrical installation, as the case may be, is responsible for the (a) safety, safe use and maintenance of the electrical installation he or she uses or leases; and (b) safety of the conductors on his or her premises connecting the electrical installation to the point of supply in the case where the point of supply is not the point of control.
- 2.5.2 Regulation 7(1) places the obligation on the user or lessor of an electrical installation to have a valid certificate of compliance for that installation.
- 2.5.3 Regulation 8(2) prohibits a municipality from connecting an electrical installation to the electricity supply unless the electrical installation has been inspected and tested by a registered person and a certificate of compliance has been issued in compliance with Regulation 8. The municipality is however entitled to permit the connection of the electrical installation for the purpose of testing the electrical installation for the purpose of the compliance certificate.
- 2.5.4 In the event that the user or lessor fails to obtain a certificate of compliance from a registered person, and the municipality permits the connection of the electricity supply, the municipality and the user or lessor will be in contravention of the Electrical Installation Regulations and liable for payment of a fine or imprisonment in terms of Regulation 15, as applicable.
- 2.5.5 In the event of death or injury to a person caused by the connection of the SSEG system, in the event that the municipality connected the SSEG system to the distribution system in contravention of Regulation 8(2) (i.e. the customer did not have a valid certificate of compliance), the municipality could potentially attract liability. This would of course depend on the factual circumstances surrounding the claim.

- 2.5.6 It is noted that Section 25 of the ERA provides that in any civil proceedings against a licensee arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated, transmitted or distributed by a licensee, such damage or injury is deemed to have been caused by the negligence of the licensee, unless there is credible evidence to the contrary.

3 CONCLUSION

3.1 **Until the SANS10142-1-2 is released and electricians are certified accordingly, is sign-off by a professional engineer necessary to provide municipalities with sufficient legal assurance regarding the compliance of SSEG systems?**

- 3.1.1 There is no specific legal requirement that a Pr.Eng has to issue the certificate of compliance to permit the electrical installation connected to the SSEG system to be connected to the distribution system.
- 3.1.2 The certificate of compliance has to be provided by a 'registered person', being a person that has sufficient knowledge of the rules applicable to electrical installations in the category for which the application is being made, and have appropriate practical experience in respect of electrical installation, verification and certification of the construction, testing and inspection of the type of electrical installation for which the application is being made and is registered as an electrical tester for single phase, an installation electrician, or a master installation electrician, as the case may be.
- 3.1.3 The Pr.Eng would only be entitled to issue a certificate of compliance if he or she falls within the definition of a registered person as defined in Regulation 11.
- 3.1.4 In the event that an installation electrician is registered with the Department of Labour as an installation electrician that is permitted to issue a certificate of compliance for the connection of a SSEG system to the distribution system, this registration will provide sufficient legal assurance that the electrical installer is entitled to issue the certificate of compliance in a form that is acceptable to the municipality.

3.2 **What legally secure options exist for sign-off that are efficient and lower cost?**

- 3.2.1 A certificate of compliance is required to be obtained in terms of Regulation 8(2).
- 3.2.2 Regulation 11 provides that a natural person can apply to the chief inspector to be registered as a 'registered person' in the specific category for which the application is being made. The chief inspector is an officer in the Department of Labour.
- 3.2.3 Accordingly, provided that the chief inspector is satisfied that the installation electrician meets the requirements to be registered as a 'registered person', and the installation electricity is registered, the installation electrician will be considered to be a registered person for the purpose of issuing the certificate of compliance pursuant to Regulation 8(2) in respect of the connection of the SSEG to the distribution system.
- 3.2.4 We understand that one of the proposals being considered in the solar industry is whether or not an installation electrician who has attended and passed the PV GreenCard Programme is capable of being considered a 'registered person' for the purpose of issuing the certificate of compliance in satisfaction of the requirements of Regulation 8(2).
- 3.2.5 In the event that the chief inspector is satisfied that passing the PV GreenCard Programme is sufficient evidence to demonstrate that the installation electrician (a) has sufficient knowledge of the rules applicable to electrical installation of a SSEG system, and (b) has

appropriate practical experience in respect of electrical installation, verification and certification of the construction, testing and inspection of SSEG systems and consequently, the installer can be registered under Regulation 11.

3.2.6 Therefore, once the installation electrician has been registered with the Department of Labour, this will be sufficient evidence to demonstrate the installation electrician is entitled to issue the certificate of compliance required to be obtained before a municipality is permitted to connect the SSEG system to the distribution system.

3.3 **Is any sign-off legally necessary given the other legal agreements and obligations of SSEG customers that municipalities typically put in place (Supplemental Contract, By-law Amendment, Council Approval etc)?**

3.3.1 Regulation 8(2) provides that, no person shall connect or permit the connection of any completed or partially completed electrical installation to the electricity supply unless it has been inspected and tested by a "registered person" and a certificate of compliance for that electrical installation has been issued.

3.3.2 Accordingly, it is necessary for a certificate of compliance to be provided by the applicant to the municipality.

ANNEXURE A: SCOPE, ASSUMPTIONS, QUALIFICATIONS AND LIMITATION OF LIABILITY

1 ASSUMPTIONS AND QUALIFICATIONS

The statements and opinions expressed herein are subject to the following qualifications:

- 1.1 this Report is based on a review of the laws, statutes, regulations and policy documents applicable the wheeling and trading of energy in South Africa. The analysis provided in this Report does not consider any laws, statutes, regulations or policy documents outside of this scope and should not be treated as representing an exhaustive list of issues related to the Instruction;
- 1.2 any views which are expressed in respect of, or on the basis of, any law, statute, regulation or similar rule are as it was in force, and on the basis of the provisions thereof, at the date of this Report;
- 1.3 we shall not be liable for any inaccuracies in this Report resulting from the actions and/or omissions and/or wilful statements or representations on the part of the SEA and/or any of their officers, representatives or agents which may take place, or which may be made in connection with the preparation and/or rendering of this Report;
- 1.4 the scope of this Report is limited to the matters stated in this Report and we cannot confirm that all other requisite permits, licences, consents, approvals, authorisations, certificates, applications, registrations and declarations have been issued to or obtained by the relevant companies to conduct their business activities;
- 1.5 we make no assessment of the possible commercial, technical, financial or tax consequences of any particular arrangement or agreement; and
- 1.6 we are duly qualified to practice law in South Africa and our opinions set out below are confined to and are given on the basis of South African law in force as at the date of this Report and in giving these opinions we have made no investigation of and do not express an opinion as to the laws of any jurisdiction other than South African law.

2 LIMITATION OF LIABILITY

- 2.1 We do not accept any liability nor shall we be liable for anything stated in or done in connection with the due diligence review, the Report or any related enquiries and work:
 - 2.1.1 for any aspect, issue, subject or consideration which falls outside the scope of the due diligence investigation; or
 - 2.1.2 in any event, to any person other than SEA.
- 2.2 Our aggregate liability for any loss, liability, damage or expense arising from, or resulting from placing any reliance on, this Report (including the executive summary) is limited to the aggregate amount of fees (exclusive of VAT and expenses) received by us in respect of the preparation and delivery of this Report.
- 2.3 We shall not have any liability for any consequential loss (including without limitation any loss of profit or bargain) in respect of this Report.

- 2.4 By accepting and relying on the contents of this Report, SEA will be deemed to accept the terms upon which this Report has been provided and the limitation of liability prescribed in paragraph 2.2
- 2.5 We make no representation regarding the sufficiency of our work, either for purposes for which this Report has been requested or for any other purpose. The sufficiency of the work we performed is solely the responsibility of SEA, as are any decisions with respect to the Instruction.
- 2.6 This Report is furnished to SEA solely for its use and may not be relied upon by any third party, referred to in any circular or announcement to shareholders or in any other document without the prior written consent of CDH.