

# Is this a powerless power minister?

By [Jason van der Poel](#)

5 Jun 2023

On 26 May 2023, President Cyril Ramaphosa signed a proclamation transferring certain powers under the Electricity Regulation Act No. 4 of 2006 (ERA) to the recently appointed minister of electricity, Kgosientsho Ramokgopa. The minister of minerals and energy, Gwede Mantashe, previously held these powers.



Jason van der Poel, partner at Webber Wentzel

While the proclamation is intended to bring some much-needed clarity on the delineation of the two ministers' powers, it has in fact muddied the waters further.

The president's proclamation transfers to minister Ramokgopa "all powers and functions" specified under sections 34(1) and 34(2) of the ERA, except for the ministerial power to implement determinations on new energy capacity contained in section 34(2)(a) to (e). Section 34(2) only has paragraphs (a) to (e), so the exception renders the new minister's powers under this section meaningless.

Section 34(1) empowers minister Ramokgopa to determine the different sources of new energy generation, the percentages to be generated from each source, to whom it may be sold, and to hold a competitive tendering process. The powers in Section 35(4), which remain with minister Mantashe, relate to the power to make regulations regarding the different sources of new energy generation, the percentages to be generated from each source, to whom it may be sold, and to hold a competitive tendering process. There is considerable overlap between sections 34(1) and 35(4).

## Issuing determinations under the IRP

The Electricity Regulations on New Generation Capacity have not changed. They specify that the power to draw up the Integrated Resource Plan (IRP) sits with, and remains with, the minister of minerals and energy. The IRP sets out the

sources of South Africa's intended new energy generation over the long term (coal, gas, wind, solar, nuclear and storage) and what percentages they will contribute.

What powers can minister Ramokgopa actually exercise? He can issue new determinations under the existing IRP to procure new power to plug the gaps in South Africa's electricity generation, but minister Mantashe has already issued determinations for procuring coal, solar, wind and nuclear.

Other duties referred to in the presidential statement, but not in legislation, are that minister Ramokgopa will oversee the work of the National Energy Crisis Committee, work with Eskom's board and management to end load shedding and ensure that the Energy Action Plan is implemented speedily.



## Electricity minister given power procurement role

Alexander Winning 26 May 2023



## Greater clarity needed

There is no clarity on how long minister Ramokgopa's appointment will last (will it be only until South Africa overcomes its supply challenges or will there be a permanent minister of electricity?) and how his performance will be measured – his key performance indicators, in other words.

It appears from various political statements that there is no confusion within the cabinet about delineating the two ministers' powers. Those outside cabinet may speculate that the uncertainty that arises from the drafting of the proclamation holds potential for conflict not only between ministers Ramokgopa and Mantashe, but could also involve the minister of public enterprises, Pravin Gordhan, who is responsible for oversight of Eskom.

So far, minister Ramokgopa has indicated he is eager to add more renewable energy to South Africa's generation capacity, but he has also indicated that it would make sense to extend the life of the country's coal-fired power plants. This has caused consternation among those who expect the new minister to accelerate the just energy transition.

Further clarity on exactly what minister Ramokgopa is empowered to do and not do would be welcomed.

## ABOUT THE AUTHOR

Jason van der Poel, partner at Webber Wentzel

For more, visit: <https://www.bizcommunity.com>