

Dear Members

You may recall our previous court action (in conjunction with the Nelson Mandela Bay Chamber of Business) in which we challenged the Energy Regulator's (NERSA) methodology of determining municipal tariffs.

The action was taken because, in the past, there was no way to challenge the inefficiencies built into the electricity tariffs by municipalities, because the Regulator simply gave all municipalities a tariff increase based (predominantly) on the increase granted to Eskom. This Guideline & Benchmarking approach simply exacerbated bad tariffs and there was little motivation for municipalities to determine fairer tariffs, contain electricity losses or to spend the electricity revenue on electricity infrastructure. When engagement with the Regulator regarding the unlawful methodology failed to deliver results, we had no alternative but to seek relief from the courts, because, in law, municipalities are only permitted to recover their efficiently incurred cost of supply and a small return on assets.

So, as a result of our legal action, in 2022 the Guideline & Benchmarking methodology that NERSA was employing was declared unlawful by the court and the court ruled that, from the 2024/2025 year, municipalities would be required to submit a valid Cost of Supply Study when applying for electricity increases, which would inform the increases per tariff category.

The Regulator is required to analyze the data and ensure the validity of the COS - (Cost of Supply) (by verifying the data using audited financial accounts etc), before approving any increases.

When the 2024/2025 electricity tariffs were proposed, the following occurred:

- Msunduzi proposed a 17% increase, when they “consulted” with us (as is legislatively required) - they informed us that this was the outcome of their COS Study;
- We requested a copy of the COS Study so that we could engage meaningfully – Msunduzi refused to make it available, saying that it was confidential, we disagreed and objected, to no end;
- NERSA is also required to consult with the public before determining a tariff, so we requested a copy of Msunduzi's COS Study from them - they too refused to make it available and asked us to submit a PAIA Application, which we did, but to no avail, because they still failed to furnish us with the COS Study;
- NERSA then awarded Msunduzi a 15% increase across tariff categories;
- This left us no alternative but to embark on legal action to gain access to the COS Study and documents relating to the approval process, so that we could ascertain whether there had been procedural and substantive fairness in determining this tariff;

- Having established that the process was flawed and the study questionable, we applied to have the 15% tariff declared unlawful and set aside;
- The 2024/25 tariff increase of 15% that was approved by NERSA was declared unlawful in November last year, and in court proceedings yesterday, to determine relief, the judge ruled as follows:
  1. The unlawful 2024/25 tariffs were set aside;
  2. NERSA was ordered to re-determine all the municipal tariffs by no later than end June 2026 – part of that process will be consultation on the COS Study on which the tariffs are based, and which needs to determine costs and tariffs per customer category – cross subsidization is not permitted \*;
  3. Once redetermined, the tariffs are to be adjusted;
  4. If the tariffs are not determined and adjusted by end June 2026, the default position kicks in, which means that the applicants will be granted interim credits at the rates specified in the order, until NERSA eventually determines the tariffs.

\*Because there is a risk that certain customer categories (domestic), who have been enjoying relief at Industry's expense, might find that they have been undercharged for electricity (although given the disparity between Eskom and Msunduzi's tariffs that seems unlikely), we specifically asked for relief to be limited to our members, however the Regulator insisted that all tariffs be adjusted by them.

It is therefore critical, that all sectors of the economy engage in the consultation process that will unfold to ensure fair and cost-reflective tariffs in every customer category.

Yours in Business,

Melanie