



The Association of Municipal Electricity Utilities (Southern Africa)

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7 May 2014

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NERSA Consultation Paper: 7 April 2014

CONSULTATION PAPER ON THE GUIDELINE FOR ELECTRICITY RESELLERS/TRADERS TARIFF IN SOUTH AFRICA

General:

The AMEU was founded in 1915 and for almost 100 years has provided a forum and network for:

- The Engineers who are practising in, and managing, the electricity distribution industry at local community level;
- The Municipal Councillors who carry the responsibility and the statutory executive authority for providing services, including electricity, to their communities; and
- The suppliers of equipment, materials and services to the electricity supply industry in Southern Africa, through its Affiliate membership structure.

The comment provided in this submission on the NERSA Consultation Paper may not however represent the views of all of the AMEU members.

Introduction and background:

The Introduction (page 4) and Background (page 8) sections of this consultation paper indicate that the Energy Regulator has been investigating issue related to `electricity traders/resellers' since 2007/8 in an effort `to study the magnitude of the market and the associated regulatory implications'. This process included conducting six regional stakeholder workshops during October 2011.

The AMEU has on a number of occasions requested that NERSA officials attend to the important issue of the regulation of the `resale of electricity', a process that is a complex issue and should be handled with sensitivity due to the revenue impact of the decisions for municipalities and Eskom.

Following the significant delays in finalising the matter, it is our opinion that it is totally unacceptable that the Energy Regulator should now claim that it `has refocused the approach to develop a resellers/traders tariff instead of the regulatory framework of electricity resale.' If it is true that the amendment of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) might have an impact on the definition of reseller, then it incomprehensible that NERSA should be trying to determine and impose a resellers/traders tariff until this definition is established and an acceptable regulatory framework is established.

In any event, the paper deals mainly with certain aspects of the regulation of electricity resale, as opposed to strictly on the design and guideline level of possible tariffs charged to resellers, and seems to have a disturbing focus on municipalities. It is trite to mention that Eskom also supplies to customers who may be termed resellers.

This AMEU submission will attempt to provide comment on some of the issues raised in the consultation paper but will also recommend that it is withdrawn until the Energy Regulator is able or willing to deal firstly with the appropriate regulatory framework. **Annexure A** to this document contains a number of comments and queries relating to sections 2 through 6 of the consultation paper.

Electricity Resale Business in South Africa:

7.1. Existing Reseller Tariffs

This section, in quoting municipalities that are reported to be currently implementing reseller tariffs approved by the Energy Regulator, would imply that the paper is referring to the tariffs charged to the reseller by the distributor (Eskom or the municipality) and not the tariffs and charges levied by the electricity reseller to its customers.

No details have been provided in this paper on the proposed structure or rules pertaining to these reseller tariffs that could have a number of restrictions attached to their application according to the specific requirements of the relevant municipality.

7.2. Request for reseller tariffs proposal

This heading indicates that a 'request' has been issued to all licensed supply authorities but the wording of the documents indicates that '*The Energy Regulator has instructed all licensed supply authorities to submit resellers' tariff proposal for the next tariff review.*'

When and how has this instruction been issued and on what basis must this tariff proposal be based if no regulatory framework or guidelines are in place? When is the next tariff review intended to take place?

7.3. Tariff Structure

- **Question 1:** *Given the different tariff structures followed by the different licensed authorities, do you think the Energy Regulator should develop a standard reseller tariff that is uniform to be charged to the Electricity Reseller by the licensed authority or should each licensed authority propose a tariff for its resellers?*

Licensed electricity distributors provide supply to a multitude of customer types. These distributors clearly have very different costs structures that are dependent on a number of demographics such as the number of customers and the customer mix; bulk supply purchase tariffs and charges; load factors; and a number of other factors.

In this process, they may supply 'in bulk' to a number of different customers, such as shopping developments, housing developments, business parks and individual residential customers, who in turn choose to supply their own customers from that bulk point of supply. The 'resellers' are free to choose the most appropriate tariff for their bulk supply from the relevant licensed distributors whose responsibility ends at the metered point of supply.

It is thus not possible and appropriate for the Energy Regulator to develop a standard reseller tariff to accommodate all of the circumstances that may be applicable to the customer that may wish to resell electricity to users beyond its bulk point of supply.

There is also the view that notion of a reseller tariff should be rejected as 'resellers' are not the customer. The customer in terms of most municipal electricity supply bylaws is the property owner. The 'reseller' is but an agent of the customer in the relationship between the customer and the end-user.

- **Question 2:** *Some licensees' tariff structures include a basic charge, should a reseller charge a basic charge to its customers which will consequently result in a reseller making more profits out of the basic charge from its customers over and above the profit received from the reseller tariff?*

The paper rightly observes that the tariff structures of some licensees include a basic charge which is generally included for good reason.

As with licensed distributors, resellers must recover their costs and the paper makes an unfounded allegation that such a practice will result in the reseller making undue profit. In a licensed municipal area of supply, resellers must sell at the relevant Service Provider tariff as per the current by-law provisions of that particular municipality. If this results in additional profits or losses for the reseller, so be it.

The bulk tariffs paid by resellers are, in some instances, insufficient for resellers to cover their own costs and thus survive financially in providing an electricity service to their customers. In these instances, a fixed basic charge, specific to each municipality should be permitted.

NERSA is fully aware that one of the municipalities it quotes as implementing a `resellers tariff' [section 7.1], allows its resellers to levy a fixed charge per customer.

7.4. Municipal By-law

The paper is incorrect in claiming that *'The municipalities have enacted a standard by-law which was drafted through the Association of Municipal Electricity Undertakings (AMEU) processes.'*

Standard Draft Electricity Supply By-Laws were created by the (now) *Association of Municipal Electricity Utilities (AMEU)* as suggestions to be considered by individual municipalities for possible adoption and taken through a legislated process by that municipality for promulgation. The AMEU produced these suggested by-laws over a number of years as the electricity distribution industry was preparing itself for a restructuring process. No further changes were developed after the demise of EDI Holdings in 2011 and no statistics are available to determine how many municipalities `enacted' the standard draft by-laws as produced, or amended them in any way. A draft standard by-law has no legal standing unless approved by a municipality for application in its area of jurisdiction.

Again the question has to be raised as to why this paper has focused only on municipalities? Eskom does not believe it is required to conform to municipal by-laws and, to date, refuses to enter into service delivery agreements with municipalities. Why has NERSA not required that Eskom enter into a SDA with municipalities which would ensure its customers are covered by the municipal legislation?

- **Question 3:** *In your view do you think there is necessity for municipal regulation where electricity resale is concerned?*

No further municipal legislation is required to regulate electricity resale.

In terms of the Electricity Regulation Act, NERSA has the legislated mandate to mediate between end-users and licenced distributors. NERSA should be regulating and licencing Resellers. Only resellers that are agents of property owners (and re-sell to end-users downstream of the point of supply) should be allowed. While resellers remain unlicensed, this

mandate remains unfulfilled. NERSA, by ignoring the key issue of reseller regulation (or by seeking to move this task to the Service Authorities), and by diverting attention to the matter of a reseller tariff, is grossly neglecting their legal mandate.

- **Question 4:** *Should the reseller tariffs designed by the licensees be such that it ensures that resellers run economically viable businesses through tariffs that enable them to succeed and sustain their businesses?*

Or should the licensee propose a maximum tariff that the reseller should charge its customers to enable it to make profit without affecting the licensee's required revenue? Does this not violate the municipal by-law stating that "electricity resold shall not be less favourable to the purchaser than that would have been payable and applicable had the purchaser been supplied directly with electricity by the local electricity supply Authority"?

This question has essentially been answered under Question 2 above and licensees should not be designing reseller tariffs.

Profitability is a contractual matter between the reseller and the property owner (the Service Providers actual customer). The property owner must buy from the Service Provider at an existing municipal or Eskom tariff and the reseller must re-sell on behalf of the owner in terms of the established by-law provisions or Eskom supply agreement. The reseller is thus an agent of the property owner in terms of the relationship between the property owner and the end-user. There is no contractual relationship between the Service Provider and the end-user, as the end-user is downstream from the point of supply

- **Question 5:** *What should be the role of the municipal by-law on matters pertaining to resellers' tariff design process? Should there be any exemptions in designing a reseller tariff, or should a standard maximum tariff be set?*

There should be no role for municipal by-laws as there should be no such tariff. As stated above 'licensees should not be designing reseller tariffs'. Resellers will take supply at the most appropriate existing licensee tariff available for their purposes.

What role would any such municipal by-law have on the Eskom design process for resellers in its licensed area of supply?

7.5. Free Basic Electricity

- **Question 6:** *Some customers are entitled to a free basic electricity (FBE) benefit, does this FBE apply to customers supplied by resellers and where will the reseller be getting such a subsidy to cover for the revenue?*

Free basic electricity is a Service Authority grant, and not an electricity tariff. The Service Authority needs to contract directly with the reseller to implement the grant on its behalf. Any such contract, implementation and controls will need to meet Municipal Finance Management Act (MFMA)

requirements. Regulation and licensing by NERSA is thus a pre-requisite for Service Authorities to enter into any such contract. This also illustrates the conflict of interest that would exist were Service Authorities to play a regulatory role. Furthermore, the Service Provider has no visibility downstream of the point of supply, creating significant opportunity for fraudulent practices to occur (verification of claims would be impossible).

- **Question 7:** *What mechanism can be used so that resellers implement FBE to indigent customers and then claim from the supply authority?*

This question has been answered in Question 6 above. FBE provided to Eskom customers in municipal areas of jurisdiction is funded by the Service Authority in terms of a contract between the two relevant organisations that complies with the MFMA.

7.6. Point of Supply

- **Question 8:** *Stakeholders are requested to comment on whether municipal responsibility should only be limited to the bulk meter point of the trader/reseller or extended to include other activities related to resale, such as the standard of the reticulation network, quality of supply, meters installed as well as smart metering, billing/revenue collection, and licence conditions?*

Again the question has been limited to municipal responsibility in addressing the practice of reselling. Municipalities are themselves 'resellers' and at no point has NERSA suggested that Eskom should take responsibility beyond the municipal bulk meter point for the downstream 'reticulation network, quality of supply, meters installed as well as smart metering, billing/revenue collection, and licence conditions'.

Municipal and Eskom responsibility should only extend to the bulk meter point, as the reseller operates downstream from the point of supply.

The question also raises the issue of the capability of licensees to manage the many customers now being supplied by 'resellers' in both Eskom and municipal areas of supply. Management of the networks, losses, meters, billing and quality of supply would require, in many instances, a significant increase in the number of staff employed by the Service Provider.

- **Question 9:** *Should there be a role sharing between the supply authority and resellers on issues pertaining to the quality of service provided to the end users?*

No. The reseller is responsible for all quality of service issues downstream of the point of supply.

- **Question 10:** *Is there a rule that state that there should be one supply point for a single ERF?*

Electricity Supply By-laws is legislation approved by a municipality as the sphere of government granted the competence for electricity reticulation in

terms of Schedule 4B of the Constitution of South Africa. It is questionable whether NERSA (or national government) could override such legislation! (The principles involved in the Constitutional Court judgment in Case CCT 117/13 on 4 April 2014, while dealing with the competence of Municipal Planning, could well be relevant.)

The one erf, one supply rule comes from the need to have a single point of isolation of the supply to a property/erf, due to public safety considerations. Even with the rule to have 'one erf, one supply', a municipality can choose to have a bulk meter to a complex and let resellers do the distribution to the units in the complex, or choose to provide municipal meters to each unit. If the latter is the choice there is no need to consider multiple supplies to a single erf.

Bad experiences in the past with unmetered points as a result of distributed municipal metering within a complex resulted in the current policy of one erf, one supply (there will be no compromise on the safety issue) and if all meters for the individual units within a complex cannot be located in a single meter room / meter kiosk at the point of supply with access directly off a public street, a bulk meter is insisted upon and the complex owner/s must do the sub-metering themselves or employ a reseller.

Electricity Traders/Resellers in South Africa

The paper (definitions on page 4 and statement on page 19) clearly indicates NERSA's view is that any person or entity involved with the resale of electricity is required to be licensed. Why then has NERSA not required resellers to apply for a license to date, despite its acknowledgement all of the reported complaints.

8.1. List of Resellers in South Africa

What is the purpose of publishing this list in a consultation paper? How does NERSA currently deal with these listed organisations that it claims in the preceding paragraph, should be licensed?

- **Question 11:** *The Resellers Association is assumed to have a code of conduct for the resellers. In this light how are the issues of misconduct dealt with by the Association?*

Surely in all of the research that NERSA claims to have carried out since 2007, it will have established whether or not a 'Resellers Association (RA)' exists or not, so as not to assume the fact that it has a 'code of conduct'.

This sort of question does not belong in a public consultation paper. If NERSA has established the existence of the RA, this question should have been directed to the RA. Membership of most similar associations is in any event, voluntary (acknowledged in the paper by the statement that '*Most of them belong to the Resellers Association*') and the RA would not have

control over its members to force compliance in 'issues of misconduct'. Who is to determine what misconduct has taken place?

Finally, resellers and their Association have no legal standing until they are licensed and regulated by NERSA. The reseller is not a customer of the Service Provider (the property owner is the customer) and is not an agent of the customer in terms of the relationship between the municipality (as Service Authority and/or Service Provider) and the customer. The reseller is only an agent of the property owner in terms of the relationship between the end-user and the property owner.

- **Question 12:** *How should the Energy Regulator deal with non-affiliated members where misconduct prevails?*

As indicated above, NERSA should be licensing and regulating all resellers. 'Misconduct' or failure to comply with any of its license conditions by a reseller should thus be dealt with in terms of the appropriate legislation pertaining to misconduct of any licensed distributor.

- **Question 13:** *Is a code of conduct that will govern the activities of registered electricity resellers in the country necessary?*

There should be no need to have a specific code of conduct for resellers as they should be treated in the same manner as any licensed distributor. Any specific behaviour required of the 'licensed resellers' should be addressed in the regulatory framework for this environment.

Guidelines on the Reseller Tariff

The paper is titled as a 'consultation paper' on 'The Reseller Tariff' and yet again, this section focuses on the need for an adequate regulatory environment by stating (page 22) that '*The purpose for the guideline/ principles is to establish a regulated environment within which resale of electricity can take place in order to ensure the efficient conveyance and delivery of electricity*'.

It goes so far as to issue instructions to the effect that the Licensed Authority '..... should ensure that it takes over the electricity reticulation function and supplies directly to customers where the reseller is in breach of the conditions of reselling electricity or where the reseller terminates its service or has absconded.'

This latter statement is made before the consultation process has established exactly who has the regulatory authority over the reseller and despite NERSA claiming (Introduction – page 4) that it is not able to establish the required regulatory framework until the amendment of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) has taken place.

9.1. Customer Categories

- **Question 14:** *What should be the threshold to qualify for a reseller tariff?*

This submission has clearly indicated that there should be no such tariff.

- **Question 15:** *There are different customer categories i.e. (residential, commercial and industrial), should therefore resellers be regarded as another customer category with similar such categories (residential reseller, commercial reseller and industrial reseller) as the licensed authority?*

This response to this question will be dependent on the outcome of process to establish an appropriate regulatory environment but it is evident that resellers are active in all of the environments listed above.

- **Question 16:** *How should the resellers that supply to a mixed category for example, residential and commercial customers in the same building or complex with a single bulk supply point categorise its customers?*

The criteria for classification of customers already exist. In terms of most municipal by-laws, the conditions of sale under which electricity is resold shall not be less favourable than if the customer is directly supplied by the Service Provider. Therefore the reseller has a legal obligation to use the same classification as used by the Service Provider in the relevant area.

Regulatory Oversight

This statement (page 23/24) appears to indicate that NERSA has prematurely decided that *.... licensees (must) effectively exercise, monitor and enforce the regulatory oversight of electricity resale in terms of pricing practices, billing procedures, standards of electricity resale service and supply; disconnections; and dispute resolution*.

The above statement is made despite NERSA's own contention in the paper that (page 7):

- *No person may, without a **licence issued by the Regulator** in accordance with this Act- [Section 7(1) of the Act, 2006]:*
 -
 -
 - *c) be involved in trading*

and that:

- Section 1 of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) defines 'trading' as *'the buying or selling of electricity as a commercial activity'*.

NERSA, by ignoring the key issue of reseller regulation (or by seeking to move this task to the Service Authorities), and by diverting attention to the matter of a reseller tariff, is grossly neglecting its legal mandate.

Conclusion

This AMEU submission has provided comment on some of the issues raised in the consultation paper.

It is however deeply concerned that NERSA has seen fit to `to develop a resellers/traders tariff instead of the regulatory framework of electricity resale' when it is aware that the definition of a **`reseller'** may change during the process to amend the Electricity Regulation Act, 2006 (Act No. 4 of 2006).

Accordingly it is recommended that the consultation paper is withdrawn until the Energy Regulator is able or willing to deal firstly with the appropriate regulatory framework for electricity resale.



for
H Roos
President
AMEU

Annexure A - attached

ANNEXURE A

Corrections and queries on content of the Consultation Paper on (a) **RESELLERS/TRADERS TARIFF**

Paragraph	Statement	Comment
2. DEFINITIONS	<p>Reseller - For the purposes of this paper, a 'Reseller means an unlicensed buyer of electricity from a licensed distributor for the purpose of selling it to the end users within the area of distribution of such distributor at the approved tariff of such distributor</p>	<p>This definition implies that there is a formal process for the approval of such 'reselling tariff' and hence the municipalities and Eskom are the regulatory authority – this will only be correct if a regulatory framework, still to be established, determines this to be the case.</p>
	<p>Trading - trading' as 'the buying or selling of electricity as a commercial activity'</p>	<p>Poor wording</p>
	<p>Electricity resale – as stipulated under Section 11(2) of the Old Electricity Regulation Act: <i>"the rates at which and the conditions of sale under which electricity is thus resold, shall not be less favourable to the purchaser than those that would have been payable and applicable had the purchaser been supplied with electricity by the undertaker who....."</i></p>	<p>The 'Old electricity Regulation Act' has been repealed. It therefore is no longer applicable and should not be quoted.</p> <p>There are no 'undertakers'. They are 'utilities'.</p>
	<p>Municipality – means a category of municipality that has executive authority over and the right to reticulate within its area of jurisdiction in terms of the Municipal Structures Act.</p>	<p>All municipalities have this right and authority. Some choose not to use it. Should read - 'means a municipality that has chosen to exercise its executive authority</p>
	<p>Tariff – means a charge to a customer in respect of a licensed activity, other than a surcharge, tax, levy or duty imposed by a municipality in terms</p>	<p>Why is this paper focused on municipalities? - Eskom also has electricity resellers within its areas of supply</p>

	of section 229 of the Constitution (for electricity)	
	Free Basic Electricity - Electricity Basic Service Support Tariff (EBSST) means limited free amount of electricity supply deemed necessary to support basic energy services of a typical poor household as determined by Government from time to time. Free basic electricity and EBSST will be used interchangeably	Should read `..... means a limited free amount of electrical energy deemed necessary'
3.1. National Energy Regulator Act, 2004 (Act No. 40 of 2004)	The National Energy Regulator Act, 2004 (Act No. 40 of 2004) serves as the establishing legislation of the Energy Regulator and promotes the protection of the interests of vulnerable groups within the Electricity Supply Industry (ESI).	Where is it stated in the The National Energy Regulator Act, 2004 that the Energy Regulator should or must `promote the protection of the interests of vulnerable groups within the Electricity Supply Industry (ESI)'? Is the paper assuming that the customers of resellers are `vulnerable groups'?
5.1. The Electricity Regulation Act, 2006 (No. 4 of 2006)	The Electricity Regulation Act of 2006, (Act No 4 of 2006) repealed the 1987 Electricity Act, however the new Act does not provide a definition for the resale of electricity per se, but does specify "trading in electricity", wherein resale is implied.	The definition quoted from the Electricity Regulation Act, 2006 (Act No. 4 of 2006) defines 'trading' as 'the buying or selling of electricity as a commercial activity' but included the requirement of the possession of a trading licence granted by the Energy Regulator. A municipality, for example, is a `reseller' and is required to be licensed by NERSA. Why are smaller `resellers' then not included in the licence requirement?
5.2. Electricity Pricing Policy of 2008, GN 1398 of 2008	The Electricity Pricing Policy, GN 1398 of 19 December 2008 (hereafter 'the EPP') in	Why is the principle of `cost-reflectivity' being raised for the reselling environment when it

	<p>Section 2.3, states that: <i>“All tariffs should become cost-reflective over the next five years subject to specific cross-subsidies as provided for in Section 9.....”</i></p>	<p>continues to be ignored by NERSA for other electricity tariffs?</p>
	<p><i>Policy Position: 43</i> a) b) <i>the Energy Regulator shall provide guidelines to resellers regarding resale principles”.</i></p>	<p>Why has this not been done since the acceptance of the EPP (19 December 2008)?</p>
<p>5.3. Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996)</p>	<p>Each municipality is a service authority for the electricity reticulation function for the whole of its jurisdictional area. This means that the municipality bears the responsibility to ensure that electricity reticulation services are provided to all consumers within its area/s of jurisdiction.</p>	<p>In this is so, why then has NERSA given Eskom a licence to distribute in municipal areas and does not insist on Eskom entering a Service Delivery Agreement with each municipality in whose area it operates?</p>
	<p>Each municipality has the right within its area/s of jurisdiction, to decide who will distribute electricity in its area/s (for example whether the municipality will do so itself, whether it will establish a municipal entity to do so or whether it will appoint an appropriately licensed third party to do so, for example ESKOM, etc.)</p>	<p>If a municipality decides that it wishes to perform the service, will Eskom hand over its assets and customers to the municipality? If the municipality wished to appoint Eskom as a service provider, will Eskom enter into a service delivery agreement with the municipality? Will NERSA force the establishment of a SDA or the handover of Eskom customers and assets to a municipality that wishes to supply all of the customers in its area of jurisdiction?</p>
	<p>Each municipality has the right to pass by-laws relating to electricity reticulation in its area/s of jurisdiction.</p>	<p>Will Eskom abide by the municipal electricity supply bylaws of the relevant municipality in which it may operate if no SDA is in place?</p>

	Each municipality has the right within its area/s of jurisdiction to determine the conditions on which electricity is supplied and the circumstances in which the supply of electricity will be limited or discontinued.	It also has the right to limit the supply to one registered erf because of safety or other factors
5.4. Municipal Systems Act, 2000 (Act No.32 of 2000)	(1) A municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements,.....	Why is the argument being restricted to municipalities?
	(2) A tariff policy... (a) (b) (c) <i>poor households must have access.....</i>	Who is supplying the majority of poor households? Electricity 'resellers' or municipalities and Eskom?
5.5. Municipal Finance Management Act 2003 (Act No. 56 of 2003)	The Municipal Finance Management Act of 2003 (Act No.56 of 2003) (hereafter, 'MFMA'), in terms of monitoring of prices and payments of bulk resources, states in Section 41 that	What has this to do with municipal distributors supplying electricity in bulk to resellers within their licensed areas of supply?
	In Section 42 the act further outlines in terms of the price increases of bulk resources for provision of municipal services that: (1) <i>If a national or provincial organ of state which supplies water, electricity or any other bulk resource as may be prescribed, to a municipality or municipal entity for the provision of a municipal service,.....</i>	Municipalities are not 'national or provincial organs of state' and are thus not bound to table their tariff structures or levels in Parliament by 15 March or at any time. The NERSA contention that municipalities that have not had their tariffs approved by it by 15 March must seek exemption from the Minister of Finance is a gross misinterpretation of the requirements of Section 42 of the MFMA
6. CUSTOMER COMPLAINTS		The statistics provided are very unclear as to

		whether the customers are the reseller organisations complaining about the tariff being charged by the electricity distributor (Eskom or municipality) for electricity they purchase or whether it is the resellers customer complaining about the charges levied by the reseller.
6.1. Customer complaints on Resellers	Furthermore, of 70 customer complaints that pertain to resellers, 61 of complains , which is 87% pertained to tariffs	This section again does not make the source of the complaints clear.