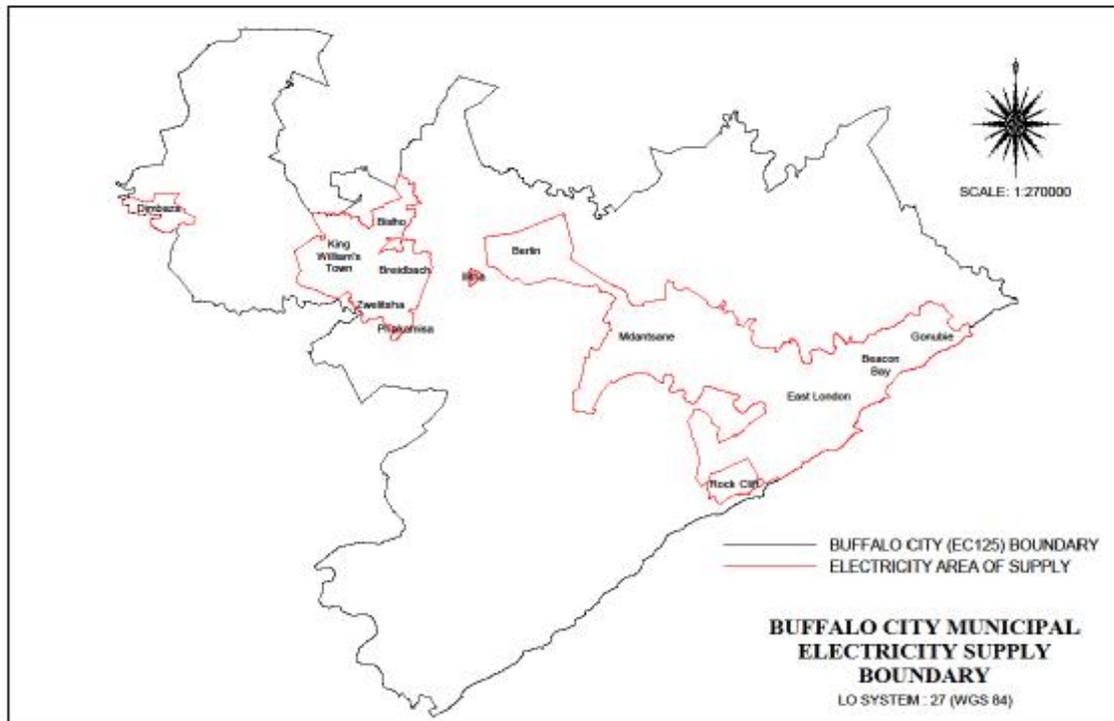




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# **CHALLENGES TO CITY GROWTH DUE TO AREA OF SUPPLY DISPUTES**

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## **1. Introduction**

The face of South African Municipalities has substantially changed over the last decade. Small Municipalities have amalgamated into larger wall to wall Municipalities and Metro's. This exercise reduced the number of functioning municipality's from over 1000 to 286 municipalities.

In Buffalo City, the first phase was the formation of Transitional Local Councils in East London, King William's Town and the surrounding rural areas, which included the capital of the Eastern Cape, Bisho.

The inclusion of Rural areas that are supplied by Eskom into the Municipality does not in itself present major problems. It however becomes a problem when rural areas situated within the urban edge, or extended urban edge are re-zoned for urban residential development. This type of re-zoning is a normal process that takes place within any growing city in South Africa. Buffalo City has two previously smaller Municipalities, Beacon Bay and Gonubie which are in close proximity of each other.

The land between Beacon Bay and Gonubie is farmland which is known as Quenera. This farmland is being re-zoned for urban development. This will ultimately join Gonubie and Beacon Bay and the Quenera area will become a new suburb forming an integral part, of Buffalo City.

As these new developments become an integrated part of the city, all services provided within these new suburbs should be provided by the Municipality to ensure equitable services are provided to all suburbs. The re-zonings are approved by the Municipal Council under the conditions that all services are provided by Buffalo City Municipality.

When Buffalo City approved the first development in Quenera, BCM requested Eskom to provide a Point of Distribution (P.O.D) to the development. After a number of meetings with ESKOM a final agreement was reached in writing, a P.O.D. was commissioned, in Buffalo City's name and has been in operation for a number of years.

Recently, in meetings with Eskom, there seems to have been a change in policy with a 180° shift, with ESKOM now refusing to provide P.O.D.'s for new developments.

This has had a negative effect on developments within the city, as developments have been approved on the basis of provision of services by BCM and to BCM standards, therefore until the disputes concerning area of supply has been resolved, developments cannot take place.

Eskom's current point of view is that, they historically supplied the previous rural areas and therefore are automatically entitled to supply the new suburban areas as well.

Buffalo City Municipality has made every effort to resolve the issue in an amicable manner, even resorting to NERSA for a Dispute Resolution Hearing.

The expansion and development of a city should be a positive sign, and should not be hampered by disputes between Eskom and Municipalities.

## **2. Laws and Regulations**

The laws within South Africa support the Municipality's right to deliver services within its area of jurisdiction.

The constitution vests these rights with the Municipality in terms of Clause 156 "Powers and functions of Municipalities". Also, the Municipal system Act of 2000 states the following:

- **"Legal Nature, Rights and Duties of Municipal Councils:**

- 2) A municipality—(a) 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, 1998

- **Rights and duties of Municipal Councils**

- 4 (1) (b) exercise the Municipality's executive and legislative authority and to do so without improper interference

- 4 (2) (d) strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner.

- 4 (2) (f) give members of the local community equitable access to the municipal services which they are entitled

- 4 (2) (g) promote and undertake development in the Municipality"

Does this mean that Municipalities should go out and take over all areas supplied by Eskom? - **No** it does not. The over-ruling factor should be the ability to provide and to maintain the required level of service to the new consumers. Eskom has always been the supplier of rural electrification. This is not disputed but the developments under discussion are within the City's Urban Edge and will no longer be rural farm lands but will become suburbs within the city.

The standard of all services must be the same as any other existing suburb. For the Municipality to be able to provide this standard of service, all services need to be provided by the city as some are not revenue generating and require cross subsidization. Cross subsidizing of other Services by electricity sales, is a reality within municipalities in South Africa. This fact is even accepted by the Department of Energy, the EDI and the Regional Electricity Distributor model, which the afore mentioned are mandated to implement. The model allows for municipalities to be paid a surcharge from electricity sales made by the RED's entity.

In terms of the law municipalities may charge the consumers within the ESKOM supplied areas a levy for the services which would normally have been subsidized from electricity sales but this would create an inequitable situation within the city limits, which while justifiable would create dissatisfaction within the city

### 3. Urban Edge Developments

Buffalo City has two areas under discussions with Eskom and NERSA,

- **Rock Cliff** is in the extended urban edge: Development of Rock Cliff within the ESKOM disputed areas cannot commence until the “area of supply” issue has been resolved. The first phases of the development fall within Buffalo City’s existing area of supply and therefore will go ahead.
- **Quenera** falls within the existing urban edge.

Development within the suburb of Quenera, started in April 2005 and discussions between Eskom and BCM were positive with Eskom agreeing to provide a Point Of Delivery (POD) to the Municipality. A report was submitted to the BCM council to formalize the provision of services within BCM’s urban edge. Buffalo City Council took a resolution of August 2006 which states:

“That all future electricity customers within the Buffalo City Municipality’s urban edge should be serviced by Buffalo City.”

Correspondence received by BCM confirmed that Eskom had agreed to supply BCM with P.O.D’s for new developments within the urban edge.

All projects proceeded until BCM commenced negotiations for additional P.O.Ds for the Quenera area, as well as discussions on the future suburb of Rock Cliff. During the meetings ESKOM stated that in their opinion BCM have no rights within these areas as they form part of ESKOM’s supply area therefore ESKOM no longer were in favour of providing P.O.D’s to BCM. This was a complete turn around from the previous negotiations. After a number of meetings, Buffalo City was informed by Eskom that:

- Eskom no longer in favour of transferring existing customers.
- Eskom will compensate BCM for the original Quenera P.O.D connection and 18 months of Eskom billing for the P.O.D (NMD, Network Charges Etc.Etc.)
- Developer to rebuild all networks to the Eskom standards.
- Network to be handed over to Eskom.
- BCM to apply for connections for street lighting, sewage pump etc.

Further meetings have been held with Eskom to resolve the issues. The developer has installed the network to BCM standards and the network has been taken over by Buffalo City, which is now a BCM asset. By ignoring these facts it seems as if Eskom have not considered the following:

- As the agreement was already in place, the Developer installed the network to BCM standards. To change them to Eskom standards will incur additional costs.
- The installation has been completed and taken over by BCM. Installation is a BCM asset.
- The agreement in place can only be changed by both parties not Eskom alone.
- By not abiding by the agreement, Eskom is negatively affecting future developments within BCM.

#### **4. Why BCM and not Eskom?**

The areas under discussion should be supplied by BCM rather than Eskom for a number of reasons.

- Re-zoning converts the rural area into suburban area. Therefore BCM have to ensure the same level of services for all consumers.
- The new areas become an integrated part of existing BCM suburbs.
- The area falls within the urban edge.
- All existing customers in the area have sold their properties to the developer. Therefore they are no longer Eskom customers all customers in the area to be developed will be new customers.
- Provision of equitable services (e.g. Street lighting, Roads, etc.) will require the cross subsidy from electrical sales.
- Buffalo City is expanding and has the obligation in terms of the Municipal Finance Act, to ensure financial stability of the Municipality.
- Most importantly of all is the MSA clause 4 (2) (d): Municipalities must strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner.

There are a number of services that are cross subsidized by electrical sales such as:

- Water
- Streetlights
- Solid Waste Removal
- And others

It would not be in the city's interest to allow developments to take place that are not sustainable since electricity sales would have to cross-subsidise the other services . If the city allowed developments to take place the only way to ensure the necessary

income would be to levy a surcharge to the consumer for provision of services within Municipal boundaries as allowed by the MSA

## **6. Conclusion**

In terms of the law Municipalities must provide equitable services to its communities, this cannot be done without cross subsidization.

If City's are to grow and be sustainable, they need to have an income base that will ensure cross subsidy of non-income generating services, to ensure sustainable services are rendered to the consumer.

A levy could be charged on the service provided by Eskom but this is not a satisfactory solution as it would create an inequitable situation within the city.

Hopefully, into the future, an amicable solution and way forward can be developed by Buffalo City and ESKOM through NERSA.