



Consultation Paper on the Guidelines for Electricity Reseller Tariffs

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Stakeholders and members of the public are invited to comment on the consultation paper in writing. The deadline for comments is **09 March 2015**.

Written comments must be sent to Mrs Nomalungelo Simelane at:

Post: Electricity Regulatory Reform Department
The National Energy Regulator
PO Box 40343
Arcadia
Pretoria, 0007

Email: electricityresale@nersa.org.za

Tel: (012) 401-4027

Fax: (012) 401-4700

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GUIDELINES FOR ELECTRICITY RESELLERS (NON LICENCED TRADERS)

INTRODUCTION

1. The Electricity Regulation Act, 2006 (Act No. 4 of 2006) ('the Act') mandates the National Energy Regulator (NERSA) to, among other things, regulate prices and tariffs, and issue licences for electricity Generation, Transmission, Distribution, exports and imports, and trading activities. Electricity resale falls under trading activities (buying and selling of electricity), however, unlike electricity traders that are licensed, the resellers remain unregulated (non-licensed and/or unregistered).
2. 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).
3. In terms of the Electricity Pricing Policy, GN 1398 of 19 December 2008 ('the EPP') the Energy Regulator is mandated to develop the Guidelines on Electricity Resale Principles as reflected in position 43 of Section 8.20.
4. A reseller is defined by the Energy Regulator as a non-licensed trader of electricity (a person, corporation or organization), that supplies electricity to dwellings in high density housing complex; residential flat building, residential gated sectional title units and/or free stands in a complex, shopping mall or shopping complex, commercial building (including offices) and has the ability to meter its customers and provide a bill clearly stating the kilowatt hours consumed, the tariff per kilowatt hour and the total amount charged¹.

¹ The definition for the Reseller is a working definition used in the interim, this will be changed once the amendment of the Electricity Regulation Act is finalised.

BACKGROUND

5. The resale of electricity in the South African ESI is a growing business. Section 7 of the Act, makes provision for the licensing of Generation, Transmission, Distribution, export or import and trading activities by the Energy Regulator.
6. Electricity resale, by default, falls under trading where the buying and/or selling actually takes place, however, it remains 'unlicensed or unregistered', implying that it remains an 'unregulated' business activity from a regulatory point of view.
7. The Energy Regulator commissioned a research project in 2007/08 to study the magnitude of the reseller market and the associated regulatory implications.
8. The Energy Regulator conducted further consultations with key stakeholders in the Electricity Resale industry.
9. A concept paper was developed in 2011 and circulated to key identified stakeholders as a precursor for the provincial consultation in the form of workshops. As part of the consultation, six provincial workshops were convened in October 2011 at Cape Town, Nelson Mandela Bay, Bloemfontein, East London, Durban and Johannesburg.
10. These workshops were characterised by the key identified stakeholders, such as municipalities, Eskom, resellers and customers groups who presented their experiences and challenges pertaining to the Electricity Resale business.
11. The increase in the number of customer complaints warranted NERSA to investigate customer complaints pertaining to reseller tariffs.

12. While the Act is being amended, NERSA's focus will be on developing Guidelines for Electricity Reseller Tariffs instead of the Regulatory Framework on Electricity Resale which will be finalised at a later stage.
13. NERSA also consulted with some of the licensees that have received tariff approvals for resellers.
14. The Consultation Paper on the Guidelines for Electricity Reseller Tariffs was published on the NERSA website on 06 April 2014 with an invitation to stakeholders to submit written comments. The closing date for comments was 07 May 2014.
15. Subsequently, a public hearing was convened on 22 July 2014 at Gallagher Convention Centre, Midrand on the subject matter.
16. Comments received from this public hearing were considered when developing these guidelines.

PURPOSE

17. The principal aim of this Consultation Paper on the Guidelines for electricity Reseller Tariffs is to:
 - (a) solicit comments from stakeholders on the existing tariff structures, especially those that have an implication on the electricity resale business;
 - (b) explore various options available in promoting the orderly functioning of the ESI in the country, including electricity resale and/or trading; and
 - (c) comprehensively seek stakeholder input on the roles, responsibilities and obligations of all interested and affected parties within the electricity resale value chain or ESI.

APPLICABLE LAW

18. NERSA is a regulatory authority established as a juristic person in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004). NERSA's mandate is to regulate the electricity, piped-gas and petroleum pipeline industries in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), Gas Act, 2001 (Act No. 48 of 2001) and Petroleum Pipelines Act, 2003 (Act No. 60 of 2003). In terms of section 4(ii) of the Electricity Regulation Act, 2006, the National Energy Regulator is mandated to regulate prices and tariffs.

The Electricity Regulation Act, 2006 (Act No. 4 of 2006)

19. The Electricity Regulation Act, 2006 (Act No. 4 of 2006) ('the Act') assigns powers to the Energy Regulator to regulate electricity prices and tariffs.
20. Section 1 of the Act defines 'trading' as '*the buying or selling of electricity as a commercial activity*'. In this instance the trader possesses a trading licence granted by the Energy Regulator. The Electricity Regulation Act, 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.

Electricity Pricing Policy (EPP) of 2008, GN 1398 of 2008

21. The Energy Regulator is mandated by the EPP to develop guidelines on Electricity Reseller tariffs reflected in Section 8.20:

There are extensive debates on the functions and financial viability of resellers. The key issues relate to the charges of resellers, their responsibilities and whether customers should have the choice to take a supply from the reseller or the licensed electricity utility in the area. It is recognised that the non-cost reflective nature of the tariffs of licensees are part of the reseller's problem. The EPP proposes how this should be addressed which should then alleviate the problem. Real choice would address this issue. However, in practice choice is severely limited and thus the EPP proposes that:

Policy Position: 43

- a) *Non-licensed traders of electricity shall provide the electricity at terms, tariffs and services not less favourable than that provided by the licensed distributor in the area.*
- b) *The Energy Regulator shall provide guidelines to resellers regarding resale principles.*

22. In paragraph 2.3, the EPP states that:

All tariffs should become cost-reflective over the next five years subject to specific cross-subsidies as provided for in section 9. The application of tax or levies is provided for over and above the cost reflective charges. This should be done within the current distributors and within REDs.

EPP Policy Position: 2

Electricity tariffs must reflect the efficient cost of rendering electricity services as accurately as practical -

- *The average level of all the tariffs must be set to recover the approved revenue requirement.*
- *The tariff structures must be set to recover costs as follows:*
 - *The energy costs for a particular customer category.*
 - *The network usage cost for a particular consumer category and*
 - *Service costs associated therewith.*

Electricity Reticulation as a Municipal Function

23. Schedule 4B of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996) lists electricity reticulation as a functional matter of local government in South Africa. It further states that:

Each municipality has the right to set tariffs in respect of electricity in its area/s of jurisdiction. Municipalities are obliged in terms of section 74 of the Municipal Systems Act to adopt and implement a tariff policy on the levying of fees for services, whether provided by or on behalf of the municipality.

Municipal Systems Act, 2000 (Act No.32 of 2000)

24. In terms of the tariff policy, Section 74 of the Municipal Systems Act, 2000 (Act No. 32 of 2000) it is stated that:

- (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, and which complies with the provisions of this Act and with any other applicable legislation.*
- (2) *A tariff policy must reflect at least the following principles, namely that—*
 - (a) *users of municipal services should be treated equally in the ‘application of tariffs;*
 - (b) *the amount individual users pay for services should generally be in proportion to their use of that service;*
 - (c) *poor households must have access to at least basic services through—*
 - (i) *tariffs that cover only operating and maintenance costs;*
 - (ii) *special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or*
 - (iii) *any other direct or indirect method of subsidisation of tariffs for poor households;*
 - (d) *tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;*
 - (e) *tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned;*
 - (f) *provision may be made in appropriate circumstances for a surcharge on the tariff for a service;*
 - (g) *provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users;*

- (h) *the economical, efficient and effective use of resources, the recycling of waste, and other appropriate environmental objectives must be encouraged;*
- (i) *the extent of subsidisation of tariffs for poor households and other categories of users should be fully disclosed.*

25. Section 75, further states that:

- (1) *A municipal council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy.*
- (2) *By-laws in terms of subsection (1) may differentiate between different categories of users, debtors, service providers, services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination.*

Municipal Finance Management Act 2003 (Act No. 56 of 2003)

26. The Municipal Finance Management Act of 2003 (Act No.56 of 2003) ('MFMA'), in terms of monitoring of prices and payments of bulk resources, states in Section 41 that:

- (1) *The National Treasury must monitor-*
 - (a) *the pricing structure of organs of state for the supply of electricity, water or any other bulk resources that may be prescribed, to municipalities and municipal entities for the provision of municipal services; and*
 - (b) *payments made by municipalities and municipal entities for such bulk resources.*

TARIFF STRUCTURES TO BE APPLIED BY LICENSED AUTHORITIES WHEN DESIGNING RESELLER TARIFFS

27. The South African ESI operates within the confines of tariff structures initially developed under the Interim National Distribution Tariff System (INDTS) of 1995 as outlined below.

INDTS Tariff Structures

Tariff Name	Tariff Component			
	Fixed charge [R/pm]	Energy charge [c/kWh]	Time of use energy charge [c/kWh]	Capacity charge [R/kVA]
One-part single energy rate tariff		✓		
Two part tariff	✓	✓		
Two part time of use tariff	✓		✓	
Three part tariff	✓	✓		✓
Three part time of use tariff	✓		✓	✓

28. In terms of the INDTS and the tariff principles contained in the EPP or in Section 16 of the Electricity Regulation Act, 2006 (as stated in paragraph 25 above), a proper tariff structure that will enable a licensee or electricity service provider to make a reasonable return on their investment should have the following components, as outlined in the table below.

The tariff structures as per customer category

Customer Category	Tariff Structure			
	Fixed charge [R/pm]	Energy charge [c/kWh]	Time of use energy charge [c/kWh]	Capacity charge [R/kVA]
One-Part Tariff				
Domestic	Energy Charge (c/kWh)			
Two-Part Tariff				
Domestic	✓	✓		
Domestic	✓		✓	
Commercial	✓	✓		
Commercial	✓		✓	
Three Part Tariff				
Commercial	✓	✓		✓
Commercial	✓		✓	✓
Industrial	✓	✓		✓
Industrial	✓		✓	✓

29. Where the licensed authority is implementing the Inclining Block Tariff Structure to its end users, that structure should be implemented when designing a reseller tariff structure.
30. No licensee should prescribe a tariff that the resellers will charge its end customers. Tariffs charged to customers supplied by resellers should be similar to those that are charged to customers supplied by the licensee.

Stakeholder Question 1

Should the tariff structure implemented by the licensed authority to its customers be the same or aligned to the same tariff structure that the licensed authority designs for its reseller to ensure that the tariff structure applied to the reseller’s customer is similar to the structure the licensee implements to its customers? Kindly elaborate.

Stakeholder Question 2

Should the resellers and customers of resellers be consulted by the licensed authority designing reseller tariffs? And how should this process be conducted?

Stakeholder Question 3

Do you agree with the assertion that if the reseller tariff is designed in such a way that the various input costs are taken into account, only those costs are supposed to be passed through to the end user?

Stakeholder Question 4

Municipalities and Eskom have a liberty to cross subsidise within their customer classes, in the case of non-recovery of costs. However, in the case of a reseller's under recovering costs when providing a service to end users, what do you suggest should be done to address this issue without distorting the price the end user pays for electricity?

Stakeholder Question 5

Should incentives be provided to resellers by licensees for special cost recovery allowances, or how should resellers be compensated for any potential additional costs likely to be incurred in operating and maintaining the network beyond the bulk meter point, without over charging customers?

Stakeholder Question 6

Should a mark-up of 12% to 18% when licensees are designing reseller tariff be regarded as reasonable, to ensure that end users are charge the same tariff charged to customers directly supplied by a licensee? Kindly elaborate.

Stakeholder Question 7

How FBE should be implemented by resellers to ensure that eligible customers benefit?

THRESHOLD TO QUALIFY AS A RESELLER (NON-LICENCED TRADER)

31. A reseller should be connected to a bulk meter installed by the licensed authority.
32. A reseller will resell electricity to an end user beyond the bulk meter.
33. A reseller should be able to meter electricity either conventionally or through prepaid meters or smart meters and be able to issue invoices for electricity supplied.

Stakeholder Question 8

In most cases buildings or complexes with low load factors run at a loss, will these ever be profitable? Should resellers operate in such buildings or complexes?

Stakeholder Question 9

Should resellers be allowed to operate at freehold developments, where a house or building and the land on which it is built is fully owned by an individual?

GENERAL CONDITIONS APPLICABLE TO LICENSED AUTHORITIES

34. Section 15 of the Act, as outlined in paragraph 24 of these Guidelines, states that it is a licence condition for the licensee to state '*the format of and contents of agreements entered into by licensees*'.
35. In order to take part in electricity reselling, the licensed authority must complete a service level agreement with a reseller to operate in its area of jurisdiction.
36. Such agreements should contain the following information:
- (a) The reseller's distribution system with a low voltage must be subject to the safety standards applied by the licensed authority.
 - (b) Where the reseller's distribution system is physically connected to the system of the supplying licensee it is subject to inspection and approval by such licensee. For this purpose the reseller must give the licensee such access to the system and information relating thereto as the licensee may require.
 - (c) Where the reseller's distribution system is a medium or high voltage system, the reseller is responsible for the safe design, installation and operation of such system and must comply with all legal requirements necessary to absolve the licensed authority from responsibility for the safety of the reseller's distribution system.
 - (d) The design and installation of the reseller's electricity network must be in compliance with the connection requirements of the licensed authority as well as with all applicable laws, regulations and standards.
 - (e) A reseller is responsible for operating and maintaining its electricity network in such a manner that the reseller complies with all applicable requirements as if it had been licensed including, but not limited to, requirements relating to quality of service and supply.

- (f) A reseller must provide each and every one of its customers with an emergency telephone or cell phone number where the client can contact the reseller at all times in case of power failure or emergency.
- (g) The reseller must respond to power failures or emergencies in a manner that is, under circumstances, appropriate, timeous and effective in addressing the failure or emergency.
- (h) In the event of a power failure, a client must contact the reseller who resells to that client and not the licensed authority and a reseller must inform its client of this principle.
- (i) Information on the reseller pricing structure should mirror the local authority's approved structure.
- (j) Information on the reseller's consumer categories and where mixed customer categories exist should be stated (if any), including the number of customers within each consumer category.
- (k) A sample of an invoice it intends to issue to its electricity customers that clearly shows the energy consumed, energy amount, basic charge if any in the structure, and amount the specified period of the invoice on the application.
- (l) Proof that the reseller will install a meter for its customers approved by the supplying licensee.
- (m) A reseller should furnish information on tariffs and tariff structures to its customers and the bill should be transparent with a proper breakdown of the costs itemised.
- (n) The tariff rates and tariff structure according to which electricity is resold must be identical to the approved tariff rates and tariff structure that would have been applicable had the client been supplied with electricity by the supplying licensee. This is in line with Electricity Pricing Policy (Position 43 (a)) which states that:

Non-licensed traders of electricity shall provide the electricity at terms, tariffs and services not less favourable than that provided by the licensed distributor in the area”.

- (o) The agency fee or the bulk tariff discount rate to be applicable to the reseller.
- (p) No additional costs such as a cost for meter reading, vending, billing, or compliance services may be recovered from the customers since such costs are already included in the relevant tariff contemplated in section 21 of this guideline.
- (q) Resellers must familiarise themselves with the tariffs applicable to the licensee and must have the applicable tariffs at their disposal at all times.

Stakeholder Question 10

What conditions are currently in place between resellers and their licensed authorities for supplying electricity to the end user?

Stakeholder Question 11

How should disputes between customers supplied by resellers and reseller be resolved?

Reporting requirements of the licensees to NERSA

37. The licensees must report to the Energy Regulator on an annual basis on the following Information:
- (a) the number of bulk supply installations for resellers;
 - (b) the total capacity for each bulk supply;
 - (c) provide tariff that Resellers are offering to their customers;
 - (d) complaints that they have received from customers pertaining quality of supply, terms and tariffs;
 - (e) all safety related incidents involving generation;

- (f) the tariffs applicable to the reseller customers; and
- (g) the Standard Supply Agreement to Resellers.

Stakeholder Question 12

What other information licensee should submit to NERSA pertain to resellers?