



## **GUIDELINES ON ELECTRICITY RESALE**

***Issued by***

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## **ACRONYMS AND ABBREVIATIONS**

DoE	Department of Energy
ERA	Electricity Regulation Act
EPP	Electricity Pricing Policy
ER	Energy Regulator
ESI	Electricity Supply Industry
FBE	Free Basic Electricity
MW	Megawatt
SLA	Service Level Agreement
NERSA	National Energy Regulator

## **DEFINITION**

- Trading:** According the Act it is ‘the buying or selling of electricity as a commercial activity’ therefore traders must be licensed or registered.
- Reseller:** The Electricity Pricing Policy refers to a reseller as a ‘non-licensed trader of electricity’.
- Reticulation:** Means the trading or distribution of electricity and includes the services associated therewith.
- Supply authority:** Licensed distributors of electricity.
- Licensed Authorities:** Distributors of electricity who have obtained a licence to supply electricity from NERSA.

## **1. BACKGROUND**

The resale of electricity in the South African electricity supply industry (ESI) is a growing business. Section 7 of the Electricity Regulation Act, 2006 (No. 4 of 2006) ('the ERA') makes provision for the licensing of Generation, Transmission, Distribution, export or import and trading activities by the Energy Regulator.

Electricity resale by default falls under trading, where the buying and/or selling actually takes place. However, in South Africa, the resale of electricity remains 'unregulated' as businesses involved in electricity resale activities are not licensed or registered with any regulatory authority.

## **2. NATIONAL ENERGY REGULATOR MANDATE**

The National Energy Regulator (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).

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 end users of electricity within the ESI.

The ERA mandates NERSA to, among other things, regulate trading activities. Electricity resale falls under trading activities (buying and selling of electricity), however, unlike electricity traders that are licensed, resellers remain unregulated (non-licensed and/or unregistered). Section 4(ii) of the ERA specifically mandates the Energy Regulator to regulate prices and tariffs within the electricity supply industry.

### **3. REGULATION OF ELECTRICITY RESALE**

The following points outline the regulation of the electricity resale activity:

- 3.1. The Electricity Regulation Act, 2006 defines trading as ‘the buying or selling of electricity as a commercial activity’. Moreover, the ERA provides that certain commercial activities must be registered rather than licensed (see Sections 8 and 9).
- 3.2. Section 155(6)(a) and (7) 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. Each municipality is a service authority for the electricity reticulation function for the whole of its jurisdictional area. This means that the municipality is responsible for ensuring that electricity reticulation services are provided to all customers within its area/s of jurisdiction. It further states that ‘each municipality has the right to set tariffs in respect of electricity in its area/s of jurisdiction’.
- 3.3. The South African Local Government Association (SALGA) is a voluntary body representing all nine provincial local government associations. In terms of the Constitution, SALGA entered into a partnership with all electricity distributors, including Eskom, in the municipal area of supply through a Memorandum of Understanding and active partnering agreement signed on 30 October 2014 to ensure a cooperative and collaborative working relationship. This will help to address service delivery challenges impacting on the supply of electricity.
- 3.4. In terms of Section 74 of the Municipal Systems Act, 2000 (Act No. 32 of 2000) municipalities must adopt and implement a tariff policy on the levying of fees for services, whether provided by or on behalf of the municipality.

- 3.5. Each municipality has the constitutional right within its area/s of jurisdiction to determine, through their by-laws, the conditions for electricity supply and the situations when the supply of electricity will be limited or discontinued.
- 3.6. In terms of these guidelines, all bulk connections that will be used to resell electricity to end users beyond the bulk meter should register with the supply authority.

#### **4. OBJECTIVE OF THE GUIDELINES**

The objectives of these guidelines are:

- 4.1. to ensure that where electricity is resold to persons by non-licensed entities, it takes place in an environment that is efficiently regulated in terms of standards of supply and service, tariffs and other related matters;
- 4.2. to establish an environment where the licensed authorities can effectively perform, monitor and carry out the supervision of electricity reselling, including but not limited to:
  - (i) how reselling is priced,
  - (ii) billing procedures,
  - (iii) standards of reselling service and supply,
  - (iv) eliminating situations where the reseller's methods are unfair, anticompetitive or abusive,
  - (v) disconnections, and
  - (vi) dispute resolution;
- 4.3. to ensure that resellers have the resources they need so that they can and must satisfy the ongoing needs of the end users they supply; and

- 4.4. to create a regulatory framework to help with the regulation of electricity resale in South Africa to make sure that resellers comply with Policy Position 43 of the Electricity Pricing Policy, GN 1398 of 19 December 2008 ('the EPP'). The EPP states that non-licensed traders of electricity must provide electricity at terms, tariffs and a level of service that are not less favourable than those provided by the licensed distributor in the area.

## 5. APPLICABILITY OF THE GUIDELINES

The following outlines the boundaries where electricity resale is concerned in terms of these guidelines:

- 5.1. The Electricity Pricing Policy refers to resellers as 'non-licensed trader[s] of electricity'. For the purpose of these guidelines, a reseller is a person, corporation or organisation where there is a **bulk supply point**, beyond which there is reselling of electricity to a number of units that are individually metered.
- 5.2. 'Reseller', for the purpose of these guidelines, refers to a property owner or the body corporate who has a **bulk supply point** and whose core business is reselling electricity to a number of customers.
- 5.3. Resellers' customers are typically blocks of flats in high density housing complexes, residential flat buildings, residential gated sectional title units and/or stand-alone houses in complexes, shopping malls or shopping complexes, and commercial buildings (including offices). Following below are examples of different types of resellers that operate within the South African electricity supply industry.



### *Reseller example 1*

A property owner wants to resell electricity to a residential unit within an apartment block. The property owner decides to outsource billing services, connections and complaints handling to a service provider. The service provider has a contract with the body corporate and buys electricity from the licensed distributor on behalf of the body corporate. The body corporate also has a contract with the licensed distributor to supply the body corporate with electricity.

### *Reseller example 2*

A property owner wants to resell electricity to residential tenants within an apartment block. The owner administers billing, connections and complaints handling. The property owner buys electricity from the licensed distributor and resells to the tenants. The contract with the licensed distributor is in the property's or its owner's name.

### *Reseller example 3*

A body corporate wants to resell electricity to residential stand-alone houses within a complex. The body corporate decides to outsource billing services, connections and complaints handling to a service provider. The service provider has a contract with the body corporate and buys electricity from the licensed distributor on behalf of the body corporate.

### *Reseller example 4*

A property owner wants to resell electricity to businesses within a block of flats or shopping centre or mall. The property owner decides to outsource billing services, connections and complaints handling to a service provider. The service provider has a contract with the property owner and buys electricity from the licensed distributor on behalf of the property owner.

## **6. REQUIREMENTS TO OPERATE AS A RESELLER**

The following are the requirements to operate as a reseller:

### **Conventional Meter Customers**

- 6.1. For Conventional Meter customers, the reseller needs to be able to take meter readings and supply the customer with a bill with the following information:
  - (i) the amount of electricity used in kilowatt hours;
  - (ii) the tariff per kilowatt hour;
  - (iii) the time between billings (the billing cycle);
  - (iv) the total amount charged for electricity in Rand; and
  - (v) the contact details of the reseller (telephone number and email address).
- 6.2. The reseller must be able to provide a service to test the meter if the customer requests it.
- 6.3. The reseller should stay in touch with its customers by either SMS or letters, especially to let customers know about disconnections.
- 6.4. The reseller's main relationship with its customers is the sale of electricity.
- 6.5. The reseller must operate and maintain its electricity network in such a way that the reseller complies with all applicable requirements as if it had been licensed. This includes, but is not limited to, the requirements for quality of service and supply.
- 6.6. Where there is a common area for instance parking lot and street lights, the amount of electricity units that were used and the approved tariff that was charged should be clearly stated and should be divided by the number of customers within that bulk supply area or complex.

- 6.7. The reseller must provide each and every one of its customers with an emergency telephone or cell phone number. The customer must be able to contact the reseller at all times in case of power failure or emergency.
- 6.8. The reseller must respond to power failures or emergencies in a manner that is, according to the situation, suitable, within a reasonable amount of time and effective in addressing the failure or emergency.
- 6.9. In the event of a power failure, the customer must contact the reseller, not the licensed authority. The reseller must inform its customers of this procedure.
- 6.10. The reseller must provide the licensed distributor with:
- (i) information on the customer categories supplied by the reseller and, where there are mixed customer categories, should be stated (if any), including the number of customers within each customer category; and
  - (ii) a sample of an invoice it plans to issue to its electricity customers, clearly showing the energy consumed, energy amount, basic charge, if any, in the structure and the specified period of the invoice on the application.
- 6.11. Resellers must familiarise themselves with the tariffs applicable to the supplying licensee and must have the applicable tariffs available at all times.

### **Prepaid Meter Customers**

- 6.12. National Standard NRS 057:2009 outlines the Code of Practice for Electricity Metering. All prepaid meters should follow this Code.
- 6.13. The resellers must charge an approved tariff and the receipt received for the tokens should show the breakdown of the costs.

6.14. The reseller must provide each and every one of its customers with an emergency telephone or cell phone number. The customer must be able to contact the reseller at all times in case of power failure or emergency.

6.15. The reseller must respond to power failures or emergencies in a manner that is, according to the situation, suitable, within a reasonable amount of time and effective in addressing the failure or emergency.

6.16. In the event of a power failure, the customer must contact the reseller, not the licensed authority. The reseller must inform its customers of this procedure.

## **7. REQUIREMENTS FOR ELECTRICITY RESALE**

The following requirements apply to the licensed authority and the electricity reseller:

7.1. 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.

7.2. The service level agreement should contain the following conditions, among others:

(i) The reseller's distribution system is subject to the safety standards applied by the licensed authority.

(ii) The reseller's distribution system, which is physically connected to the system of the supplying licensee, is subject to inspection and approval by the licensed authority. For this purpose, the reseller must give the licensed authority access to the system and information relating thereto as may be required by the licensed authority.

(iii) 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. The reseller must comply with all legal requirements necessary to free the licensed authority from responsibility for the safety of the reseller's distribution system.

- (iv) 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.
- (v) Section 22(5) of the ERA makes provision for a licensee to terminate supply. The electricity reseller must adhere to this provision.
- (vi) All customers within a development (for example the body corporate, office and block of flats) have the right to request supply directly from the licensed authority.

## **8. TARIFF PRINCIPLES**

The details of the tariff design and principles are outlined below.

- 8.1. The reseller must supply its customers with information on tariffs and tariff structures. The reseller must also explain the tariffs to the customers to enable the customers to determine whether their electricity accounts are correct.
- 8.2. Where a licensed authority has offered a reseller a bulk tariff (price at which the licensed authority has contracted with the reseller), that tariff should enable the reseller to charge a tariff to its end customer that will mirror the tariff of end customers supplied by the licensed authority. A bulk tariff should mean that a reseller is able to make a profit when reselling electricity to its end customers at a tariff similar to the tariff that the licensed authority charges its end customers.

- 8.3. 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 customer 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.*
- 8.4. The reseller is not entitled to recover the cost of running their own electricity business through the charges that are made for electricity. These are separate from the resale costs – they are costs that the reseller incurs in maintaining their property and administering their own contracts with the end customers. These are not subject to the resale tariff.
- 8.5. The Sectional Titles Act, 1986 (Act No. 95 of 1986) allow landlords to recover the cost of services through levies to ensure transparency in cost recovery. No additional costs, such as the cost for meter reading, vending, billing and compliance services may be recovered from the customer since these costs are already included in the relevant tariff.
- 8.6. Information on the reseller pricing structure, which will be applicable to the end customer, shall mirror the approved tariff structure for the licensed distributor in the area of supply.
- 8.7. The reseller may choose to use the large power (commercial or industrial) tariff offered by the licensed authority. The reseller should then resell to its end customer at a tariff that will mirror the tariff charged by the licensed authority to its end customers.
- 8.8. The Free Basic Electricity (FBE) benefits, if granted by the municipality, should be passed on to eligible end customers supplied by the reseller. Customers who qualify

for FBE should be registered with the local authority in order to claim the units from the municipality.

- 8.9. If the reseller charges customers a tariff that is higher than the approved tariff, the reseller may face civil proceedings for the recovery of the amount overcharged and may be required to pay interest on the amount overcharged.

## **9. REGISTRATION REQUIREMENTS**

The following are required for the registration of a reseller:

- 9.1. Section 7 of the ERA makes provision for the licensing of Generation, Transmission, Distribution, export or import and trading activities by the Energy Regulator. In terms of Section 4 (a) of the ERA, a person that does not hold a licence must be registered.
- 9.2. Non-licensed distributors of electricity, as defined in these guidelines, that do not hold a distribution licence must register with the licensed authority from which the bulk connection was obtained in the manner set out in these guidelines.
- 9.3. A reseller must register with the licensed authority by completing the registration form provided by the licensed authority for this purpose. The reseller must also submit the required information as outlined in these guidelines, as well as the required service level agreement to the licensed authority.
- 9.4. Such registration can, according to the discretion of the licensed authority, be completed in such a manner as the licensed authority deems fit.

## **10. REPORTING REQUIREMENTS OF THE DISTRIBUTOR TO NERSA**

The Distributor must report to NERSA in terms of the following:

10.1. The Distributor must register and maintain a database and report to the Energy Regulator on new bulk connections.

10.2. The Distributer must report on the following information for each of the Distributor's financial years and it must be submitted at the same time as the D-forms:

- (i) date of registration and commissioning of the bulk meter installation;
- (ii) installed capacity;
- (iii) customer name and account;
- (iv) stand or erf number; and
- (v) tariff complaints that have been received from customers.

## **11. COMPLAINTS AND DISPUTE PROCEDURE**

### **Between the Customer and Reseller**

11.1. If the customer has a complaint about tariffs, billing or service quality, the customer should first raise their concerns with the reseller. If the complaint cannot be resolved, the customer may raise its complaint with the licensed authority. If the complaint can still not be resolved, the matter may be referred to NERSA.

11.2. The reseller must provide a complaint facility or service point for customers. The customer's invoice or statement must contain the details on how to access the complaint facility or service point. The details should also be reflected in the service agreement with the licensed authority upon registration.



## **Between the Reseller and Licensed Authority**

11.3. If there is a dispute between the reseller and the licensed authority, it should first be raised between the two parties. If the dispute cannot be resolved, the matter may be referred to NERSA.

## **12. EXCLUSIONS**

The guidelines allow the following persons or businesses to be excluded from being regarded as resellers:

12.1. property owners who do not have a bulk point but supplies electricity to different units on their property;

12.2. property owners with tenants where the electricity portion is part of the fixed rental cost and no profit is made or where electricity is supplied as a community service; and

12.3. persons or businesses who rent at one site or to a defined group of customers, and who have no intention of expanding their electricity sales.

## **13. CONCLUSION**

The following conclusions were drawn:

13.1. These guidelines provide electricity resale principles until the development of the Electricity Licensing Regulation has been completed. The guidelines will be revised from time to time to include lessons learnt from its implementation.