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1. INTRODUCTION

The National Energy Regulator (‘the Energy Regulator’) is embarking on a consultation process on the Guidelines for the Electricity Reseller Tariffs in South Africa. This consultation process follows six regional stakeholder workshops conducted by the Energy Regulator in October 2011 at Cape Town, Nelson Mandela Bay, Bloemfontein, East London, Durban and Johannesburg.

With the amendment of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) which might have an impact on the definition of reseller, the Energy Regulator has refocused the approach to develop a resellers/traders tariff instead of the regulatory framework of electricity resale. To continue with the consultations process, the Energy Regulator is requesting that stakeholders comment on the issues and proposals set out in this paper.

The Energy Regulator will subsequently make its decision based on the written comments on this consultation paper as well as the scheduled public hearing. Stakeholders are requested to send their comments on the issues raised in this document to the following email address: electricityresale@nersa.org.za

2. DEFINITIONS

**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’.

**Trading** - trading’ as ‘the buying or selling of electricity as a commercial activity’.

**Electricity resale** – as stipulated under Section 11(2) of the Old Electricity Regulation Act: ‘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 is
supplying the seller with electricity and every seller shall, at the request of any purchaser furnish him with such information as may be necessary to enable him to determine whether the electricity accounts received by him are correct”.

**Reticulation** – for the purpose of this paper, means trading or distribution of electricity and includes services associated therewith.

**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.

**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 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

### 3. THE ENERGY REGULATOR’S MANDATE

The National Energy Regulator 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). The mandate of the Energy Regulator is to regulate the electricity, piped-gas and petroleum pipelines in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the Gas Act, 2001 (Act No. 48 of 2001), the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) and the Petroleum Pipelines Levies Act, 2004 (Act No. 28 of 2004).
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). More details about the Energy Regulator’s mandate are provided below in the legislative perspective section.

4. **BACKGROUND**

In order to acquire a better understanding of the operations of electricity traders/resellers in the country, the Energy Regulator commissioned a research project in 2007/08 to study the magnitude of the market and the associated regulatory implications. The report of this study is available on request. Arising from the recommendations of the study, the Energy Regulator decided to initiate further consultations with key stakeholders in the Electricity Resale industry. To this end a concept paper was drafted by the project team and circulated to key identified stakeholders prior to convening the provincial workshops. In these workshops, the key identified stakeholders (viz, Municipalities, Eskom, Traders/resellers and customers groups) were requested to present on their experiences and challenges on Electricity Resale. Further consultation with licensees that have reseller tariffs approved by the Energy Regulator was conducted. In addition, there were consultations conducted with licensees that intend to propose a reseller tariff in the next tariff review. All consulted licensee confirmed that a reseller tariff is necessary.

5. **LEGISLATIVE PERSPECTIVE**

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

The Electricity Regulation Act, 2006 (No. 4 of 2006) (‘the Act’) assigns powers to the Energy Regulator to regulate electricity prices and tariffs. Section 4 (a) of the Act states that:

*The Regulator must:*

i. consider applications for licenses and may issue licences for-
a) the operation of generation, transmission or distribution facilities;
b) the import and export of electricity;
c) trading;

ii. regulate prices and tariffs;

iii. register persons who are required to register with the Regulator where they are not required to hold a licence;

iv. issue rules designed to implement the national government’s electricity policy framework, the integrated resource plan and this Act;

v. establish and manage monitoring and information systems and a national information system, and co-ordinate the integration thereof with other relevant information systems;

vi. enforce performance and compliance, and take appropriate steps in the case of non-performance;

Furthermore, Section 7(1) of the Act, 2006 provides that:

No person may, without a licence issued by the Regulator in accordance with this Act-

a) operate any generation, transmission or distribution facility;

b) import or export any electricity; or

c) be involved in trading

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’. With this instance the trader possesses a trading licence granted by the Energy Regulator. 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.

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 Section 2.3, 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 provided for over and above the cost reflective charges. This should be done within the current distributors and within REDs

**Policy Position: 2**

*Electricity tariffs must reflect the efficient cost of rendering 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”.

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

“There are extensive debates on the functions and financial viability of reseller. 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”.

Electricity Reticulation as a Municipal Function


- 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.

- 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.). Because electricity reticulation is a municipal service, each municipality must follow the procedure and apply the criteria set out in section 78 of the Municipal Systems Act when it makes that decision.

- Each municipality has the right to pass by-laws relating to electricity reticulation in its area/s of jurisdiction.

- 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. The Municipal Systems Act Section 74(2) prescribes certain principles which tariff policies are obliged to reflect.

- 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.

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.
(3) A tariff policy may differentiate between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.

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.

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:

(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.

(2) Each organ of state providing such bulk resources to a municipality must within 15 days after the end of each month furnish the National Treasury with a written statement setting out, for each municipality or for each municipal entity providing municipal services on behalf of such municipalities-

(a) the amount to be paid by the municipality or municipal entity for such bulk resources for that month, and for the financial year up to the end of that month;

(b) the arrears owing and the age profile of such arrears; and
(c) any actions taken by that organ of state to recover arrears.

In Section 42 the act further outlines in terms of the price increases of bulk resources for provision of municipal services that:

1. 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, intends to increase the price of such resource for the municipality or municipal entity, it must first submit the proposed amendment to its pricing structure-

   (a) to its executive authority within the meaning of the Public Finance Management Act; and
   (b) to any regulatory agency for approval, if national legislation requires such approval.

2. The organ of state referred to in subsection (1) must, at least 40 days before making a submission in terms of subsection (1)(a) or (b), request the National Treasury and organised local government to provide written comments on the proposed amendment.

3. Any submission in terms of subsection (1)(a) or (b) must be accompanied by-
   (a) a motivation of the reasons for the proposed amendment;
   (b) an explanation of how the amendment takes account of-
      (i) the national government’s inflation targets and other macroeconomic policy objective;
      (ii) steps taken by the organ of state to improve its competitiveness or efficiency in order to reduce costs;
      (iii) any objectives or targets as outlined in any corporate or other governance plan applicable to that organ of state;
   (c) any written comments received from the National Treasury, organised local government or any municipalities; and
   (d) an explanation of how such comments have been taken into account.
(4) The executive authority of the organ of state must table the amendment and the documents referred to in subsection (3) in Parliament or the relevant provincial legislature, as may be appropriate.

(5) Unless approved otherwise by the Minister, an amendment to a pricing structure which is tabled in Parliament or the relevant provincial legislature-

(a) on or before 15 March in any year, does not take effect for the affected municipalities or municipal entities before 1 July in that year; or

(b) after 15 March in any year, does not take effect for the affected municipalities or municipal entities before 1 July in the next year.

Some of the licensed authorities charge tariffs different from those that have been approved by the Energy Regulator as required by the provision of this act.

6. CUSTOMER COMPLAINTS

Following a number of complaints from customers, the Energy Regulator commenced an investigation on resellers, which although have been in existence for a long time seemed to have grown recently. An analysis done by the Energy Regulator on customer complaints received in 2009/10 reflected that 67% pertained to billing and tariffs (see graph below).

Figure 1: Customer Complaints – National 2009/10

![Customer Complaints - National 2009/10](image)
Analysis of customer complaints received in 2012/13 reveals that 81% pertained to billing and tariff, of which 58% pertained to billing and 23% pertained to tariffs (see graph below).

**Figure 2: Customer Complaints – National 2012/13**

![Customer Complaints – National 2012/13](image)

6.1. **Customer complaints on Resellers**

An analysis of customer complaints between 18 January 2011 and 19 December 2013 showed that out 440 customer complaints received by the Energy Regulator, 70 of the customer complaints which is 16% pertained to Resellers.

**Figure 3: Customer Complaints – National 2011/13**

![Customer Complaints - 2011-2013](image)
Furthermore, of 70 customer complaints that pertain to resellers, 61 of complain, which is 87% pertained to tariffs.

**Figure 4: Customer Complaints on Resellers**

For this reason the Energy Regulator is concentrating on the principles of reseller tariffs in the meantime, while awaiting the finalisation of the amendment of the Electricity Regulation Act. Thereafter, it will develop a framework for the regulation of electricity resale.

7. **ELECTRICITY RESALE BUSINESS IN SOUTH AFRICA**

7.1. *Existing Reseller Tariffs*

City of Tshwane and City of Ekurhuleni are the only municipalities that are currently implementing reseller tariffs as approved by the Energy Regulator. Municipalities such as City Power and Centlec, intend to propose reseller tariffs for the Energy Regulator’s approval in the next tariff review.

7.2. *Request for reseller tariffs proposal*

The Energy Regulator has instructed all licensed supply authorities to submit resellers’ tariff proposal for the next tariff review. The guidelines being developed through this project will inform the course of action for implementing the resellers’ tariff.
7.3. **Tariff Structure**
Licensed electricity distributors use different tariff structures, therefore, the approval of reseller tariff proposals will be dealt with on case by case basis.

<table>
<thead>
<tr>
<th>Question 1</th>
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<tbody>
<tr>
<td>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?</td>
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</table>

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<tr>
<th>Question 2</th>
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<tbody>
<tr>
<td>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?</td>
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</tbody>
</table>

7.4. **Municipal By-law**
The municipalities have enacted a standard by-law which was drafted through the Association of Municipal Electricity Undertakings (AMEU) processes. This by-law, in essence, states that the resellers cannot charge a different rate than that which the licensed local authority would charge if it supplied electricity directly to the end user and cannot apply different conditions from that which the municipality would impose. This is in line with provisions in the old 1987 Electricity Act, which has been replaced as well as Policy Position 47 the Electricity Pricing Policy.
**Question 3**

In your view do you think there is necessity for municipal regulation where electricity resale is concerned?

**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”?

**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?

### 7.5. Free Basic Electricity

According to the Free Basic Electricity Policy of 2003, “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 is used interchangeably.

In essence this policy seeks to “address ways and means through which government interventions can bring about relief to poor electrified households and ensure optimal socio-economic benefits from the National Electrification Programme.” The FBE policy
states that, “Grid connected households will be provided with 50 kWh of free basic electricity funded mainly through relevant inter-governmental transfers, subject to the contractual obligations between the Service Provider and the consumer being met. Any consumption in excess of the set limit (50 kWh) will be payable by the consumer”.

**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?

**Question 7**

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

### 7.6. Point of Supply

Most licensees where resellers operate, categorically stated that the by-laws only make provision for a single point of supply (bulk point) on a residential/commercial or industrial complex if a single ERF and therefore the responsibility becomes that of the sectional title holder to provide all other metering points within their property development. The claim by the licensees is that the quality of the network the developer has cannot be guaranteed by the licensee; especially in cases where the distance from the transformer to a meter is very long and may result in massive electricity losses.

**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.
**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?

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

8. **Electricity Traders/Resellers in South Africa**
Through ongoing research and consultations with interested and affected parties, the Energy Regulator has identified four possible models of electricity resale in the country (refer to model 1 to model 4 below). Where a supply contract holder has been identified clearly as a trader/reseller, the Act requires that the entity must be licensed to perform the trading/reselling duties. The Energy Regulator is of the view that if an entity renders an electricity bill to an end user, then such entity is deemed to be involved in electricity trading/resale.

**Model 1: Metering and Billing Functions performed by the supply contract holder**

*All functions are performed by the Supply contract holder*
**Model 2: Third Party Metering Services**

Only metering services are outsourced from Third Party

**Model 3: Third Party Meter Reading and Billing Services**

Both functions (metering and billing) are performed by a Third Party
Model 4: Third Party Supply Contract Holder*

*Third Party is a supply contract holder and performs all the functions

8.1. List of Resellers in South Africa

Some of the electricity resellers are unknown and below is the list of resellers. Most of them belong to the Resellers Association.

<table>
<thead>
<tr>
<th>GAUTENG</th>
<th>NELSON MANDELA BAY</th>
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<td>SAIEE</td>
<td>Power Measurement and Distribution</td>
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<td>Admin - S A National Realtors Group</td>
<td>Vula Energy</td>
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<td>AFriForum</td>
<td>Electrowinds</td>
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<td>Amathola Green Power</td>
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<td>Association Management Services</td>
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<td>Dutomate utilities</td>
<td>Power Measurement and Distribution</td>
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<td>Constantia</td>
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<td>Consumer REP</td>
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<td>Editor - ENERGIZE</td>
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<td>Elexpert (Pty) Ltd</td>
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<td>energy audit</td>
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<td>Isichaba Smart Energy Solutions</td>
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<td>JMS Meter Readers (Pty) Ltd</td>
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<td>Rural Maintenance</td>
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<td>The Meter Man</td>
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<td>UMFA GTW Business Trust</td>
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<td>DURBAN</td>
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<td>Rural Maintenance</td>
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<td>UMFA KZN</td>
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<td>PEC Metering</td>
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<td>Motla Consulting Engineers (Pty) Ltd</td>
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<td>Remote Metering Solutions</td>
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<td>Isizwe Transmissions &amp; Transformers</td>
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<td>NELSON MANDELA BAY</td>
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<td>Power Measurement and Distribution</td>
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9. **GUIDELINES ON THE RESELLER TARIFF**

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. Moreover, these guideline/principles will ensure that the interests of customers and suppliers of electricity are sufficiently protected with regards to pricing, safety, standards on quality of service in the provision of electricity.
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.

9.1. Customer Categories
There are different types of customers (residential, commercial and industrial). In some instances the customer types in a single complex are mixed e.g. residential mixed with commercial customers.

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

**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.

10. REGULATORY OVERSIGHT
The role of regulatory oversight is essential in ensuring that licensees 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
INVITATIONS TO COMMENT

Stakeholders are requested to comment in writing on the consultation paper on Electricity Resale in South Africa. Written comments can be forwarded to electricityresale@nersa.org.za; hand-delivered to 526 Madiba Street, Arcadia, Pretoria or posted to P.O Box 40343, Arcadia, 0083, Pretoria, South Africa. The closing date for the comments is 07 May 2014 at 16H00.

For more information and queries on the above please contact Mrs Nomalungelo Simelane and Mr Moefi Moroeng at the National Energy Regulator of South Africa, Kulawula House, 526 Madiba Street, Arcadia, Pretoria.

Tel: 012-401 4600
Fax: 012 401 4700

End.