

COJ unlawfully discriminating against sectional title owners

 By [Ramon Pereira](#)

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In recent months it has been brought to our attention that the city seems to be billing sectional title schemes incorrectly, or alternatively unfairly discriminating against consumers who own sectional title units in respect of billing them for electricity and water.

How the city bills free-standing houses

In respect of both water and electricity, the city applies the logic that consumers who use more of a service place more of a burden on the infrastructure supporting the delivery of that service, and so should pay more for each unit of the service as they consume over certain amounts. For example, a consumer is billed at a certain rate for the first 500 units of electricity consumed; for the next 500 units he consumes it is billed at a higher rate and so on, until after 3000 units are consumed; anything above 3000 units is charged at the highest rate applicable. This is referred to as a "step tariff" used to calculate consumption charges.

How the city incorrectly bills sectional title schemes

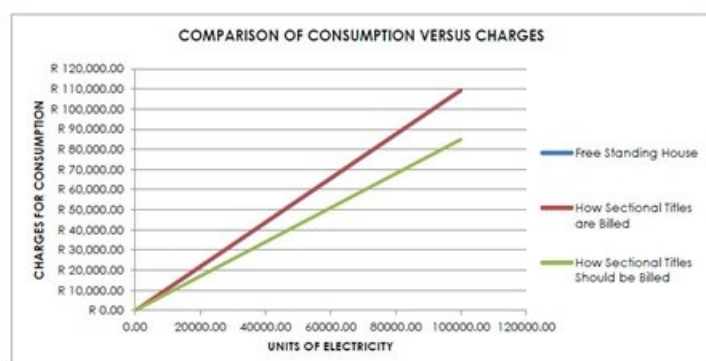
From an analysis of the method of calculation applied by the COJ to the water and electricity accounts of several large sectional title body corporates across Joburg, it is apparent that the city has been incorrectly billing these schemes, inasmuch as the city is doing one or both of the following:

1. The city is ignoring the fact that there is more than one unit in a scheme, i.e. it has been billing the consumption for the entire scheme, which might consist of hundreds of units, as if it were one free-standing house; and/or
2. The City is billing the sectional title scheme at the highest applicable rate for consumption only, i.e. it does not charge the consumer who owns a sectional title unit at the variable rate depending on consumption. This results in all owners being charged for electricity and water in the highest of the steps, and not getting the benefit of the lower charges for the lower steps, merely because they own sectional title units and do not have their own unique COJ accounts.

Impact of this incorrect billing

Normally, each unit of electricity consumed will be charged for at a rate determined by the "steps" within which the total consumption falls. For example, if the sectional title scheme uses 100,000 units of electricity then, according to the way the city is currently billing sectional title schemes, all 100,000 units will be charged at the highest applicable tariff. The cost per unit of electricity in terms of the COJ's current 2013/14 tariff, on the domestic 1 tariff, is R 1.09 per unit, exclusive of VAT. This means that the body corporate's total bill for consumption (ignoring service charges and other ancillary charges) will be R 109,630.

If this were a free-standing house that consumed 100,000 units of electricity in one month then the city would have billed R 109,146.65, but imagine that there are now 200 units in the scheme, which means that with a total consumption of 100 000 units, each unit is consuming, on average, only 500 units each per month.



If we recalculate how much the same number of units of electricity should cost, if the city charged each unit according to the step tariff, the cost drops substantially, because each unit is charged in the first and lowest band only, for its average of 500 units of electricity per month. This translates to a cost of only R424.90 per sectional title unit, and R84,980 for the whole scheme. Furthermore, this equates to R24,650 or 22% over charge for electricity by the city as it is currently billing sectional title schemes and this margin will increase exponentially with more sectional title units in the Sectional Title Scheme.***

There is nothing in law, however, which authorises the city to apply the tariff to body corporates without allowing each unit the benefit of the lower rates that the proper application of the step tariff renders to freehold owners.

In the author's opinion, there is further, no justifiable reason why the city would be allowed to discriminate between an owner of a free-standing house and an owner of a sectional title unit. This is blatantly discriminatory and unlawful.

How to remedy the problem

The first error is easily remedied by the city updating its records to reflect the number of households in the scheme. These two errors are inextricably linked, in the sense that if the city does not recognise that there is more than one unit in the scheme, the city will continue to bill the body corporate excessively because the step tariff will not be applied correctly.

The second error is far more difficult to deal with. The effect of the current calculation method is that the city is unfairly discriminating against owners of sectional title units. In order to remedy it, the city needs to update its account details to reflect not only the number of units in the scheme, but also to change the calculation method to allow for all units in the scheme to be billed for the average consumption at step tariff rates.

How the city should bill sectional title schemes

The city should take into account the number of units in a scheme and, thus, when calculating consumption charges it should consider that each unit is entitled to be billed at the step tariff. For example, if there are 10 sectional title units in a scheme then each unit is entitled to be billed for the first 500 units of electricity consumed at the lowest rate and, therefore, the sectional title scheme collectively is entitled to be billed at this same rate for the first 5000 units of electricity (500x10).

This is just as important as with water consumption as the first six kilolitres of water supplied to each household in the scheme should be free. Many trustees and managing agents are unaware of this, and are further unaware of whether they are indeed being billed correctly for the scheme's consumption.

Conclusion

This article merely seeks to explain the manner in which sectional title schemes should be billed, and the financial consequences to such schemes of an incorrect application of the tariff by the COJ.

It is not the author's intention to criticise the city for billing all sectional title scheme incorrectly. However, it appears that the city's systems automatically apply the step tariff incorrectly to most sectional title schemes.

In instances where the issue has been raised with the city by Schindlers Attorneys, the city has come to the party and adjusted the manner of billing on the client accounts, to bring them into line with the law.

Ultimately, the trustees and/or managing agents of sectional title schemes should scrutinise their electricity and water bills more closely. For example, if electricity is only being billed at Step 1 it is possible that the city is not applying the correct step tariff, and if the scheme is not being afforded any free kl (with a charge of R 0.00 in step 1) then this is a clear indication that the city is billing the scheme incorrectly.

If you are unable to have the city rectify the situation on your own, it may be financially worth taking legal action to compel the city to do so.

****These figures do not include any other ancillary charges, such network and service charges or other charges such as KVA charges that may be applicable, and are used for illustrative purposes. The precise manner in which a scheme (or any consumer's) electricity liability is calculated is complex and advice should be sought from an expert if you are uncertain as to how to calculate this yourself.*

ABOUT RAMON PEREIRA

Ramon Pereira (@SchindlersAtt) studied law at UCT before joining Schindlers Attorneys as a candidate attorney in the Property Law department. Over the past two years he has gained extensive experience in property law matters and in particular, in relation to sectional title disputes and municipality-related billing issues. He also has a keen interest in intellectual property, including trademarks and patent law.

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