

Trading in electricity in Johannesburg

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In most instances consumers are supplied with electricity either by a municipality or Eskom. However, in some instances the consumer may be supplied by a private third party 'middle man', who purchases electricity from either a municipality/Eskom and then re-sells it to a consumer.



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The Electricity Regulation Act 4 of 2006 (ERA) was promulgated to establish a national regulatory framework for the electricity industry and a governing body to oversee same, the National Energy Regulator of South Africa (NERSA). In order for a municipality, Eskom or any third party to legally supply electricity to consumers they have to have been granted a specific license by NERSA.

The ERA caters for the instances whereby electricity is traded. Trading in electricity is defined as the buying or selling of electricity as a commercial activity. For example, if you are in a sectional title scheme and purchase pre-paid electricity from your body corporate, your body corporate then is technically purchasing electricity from the municipality and selling you that same electricity.

Or the body corporate may have out-sourced this function and signed up with a private meter reading company, which installs pre-paid or conventional meters, and then reads them for the body corporate, collects the costs of the electricity consumed from the tenants/owners, possibly through providing pre-paid tokens, and pays it over to the municipality/Eskom on behalf of the body corporate. It is important to note that often an administration fee will be charged by that company for providing that service which may result in the consumer paying more than they would if they were supplied directly by Eskom or the municipality.

Trading licence

In terms of the ERA no person may be involved in the activity of electricity trading without a license. At present, however, NERSA does not register or issue licenses to people trading in electricity as no mechanism exists in which to apply for same. This is because NERSA has not yet promulgated the regulations that need to be in place to govern the re-sale of electricity before they start issuing licences to trade electricity. Strictly speaking then all electricity re-sellers are prohibited from trading in electricity without a license and accordingly in light of the above any existing electricity resellers (not being Eskom or a municipality) are all currently acting contrary to the ERA.

Notwithstanding the above, the City of Johannesburg (COJ) regulates the resale of electricity in its by-laws as follows:

- the resale of electricity to the end user must be metered through a sub-meter and such sub-meter approved by the (municipal) engineer;
- the charge to the end user must not exceed the charge the municipality would itself be entitled to supply; and
- the end user has a right to be furnished with the accounts, documents and/or information used to calculate the charges.

The COJ has recently promulgated a new electricity reseller tariff and invited all resellers to make an application to be placed on this tariff where applicable. The COJ has allowed for both a business and domestic use reseller tariff and has further split each of those into a prepaid and conventional tariff. The discount is 4c per kWh across the board which equates to:

- a 3.2% to 4.4% reduction for domestic conventional use;
- a 2.8% to 4.2% reduction for domestic prepaid use;
- a 2.3% to 2.8% reduction for business prepaid use; and
- a 2.1% to 2.9% reduction for business conventional use.

The COJ has advised that in order to apply for the tariff the following process must be followed:

- there must be an account number in which the electricity is charged;
- the physical address of the electricity connection must be provided;
- the type of customer must be specified i.e. business, domestic or mixed use;
- an affidavit must be completed which confirms the number of units that are metered and used for the type of customer specified;
- a letter of authority must be supplied if the request is made on behalf of the property owner(s);
- proof of the bulk meter must be supplied in the form of a photo with the make and serial number of the device being clearly visible; and
- proof of each of the sub-meters must be supplied in the form of a photo with the make and serial number of the device being clearly visible.

It is important to note that if only some of the sub-meters are registered then only those registered will be considered for the adjustment to the billing. The COJ will presumably know that the number of sub-meters at the property as the engineer would have had to approve same prior to installation but practically how the COJ would enforce this is uncertain.

In addition, where bulk meters supply a mixed use property i.e. a combination of business and domestic, then the applicant will be placed on the business re-seller tariff unless the supply is split as per the normal application process (at the applicant's cost) in which case the relevant tariff will be applied to the respective type of supply.

Finally, the tariff change will be effected from the date of application (assuming all the requirements are met for a successful application).

By-law is clear

It is clear from the by-laws that electricity resellers cannot charge the end user more than what they would have been charged if that user were directly billed by the municipality for his/her consumption. There is some debate as to whether

this means that the reseller can charge a network and service charge per individual in a scheme when the reseller is only charged once for these charges in respect of the bulk meter.

There is recent case law, however, that states that doing so would be unlawful. In addition, the case law goes on to indicate that a landlord may not make a profit when recovering amounts in respect of municipal services. This will obviously be in conflict with the very idea of the reseller tariff and as such it is uncertain how this case will be applied in that setting. Furthermore, practically speaking many body corporates bill their owners for municipal services as per the participation quota.

Such body corporates will presumably not be able to apply for the reseller tariff unless they install sub-meters for each and every unit. In addition, in terms of the Sectional Titles Act, if there are sub-meters in a scheme then the body corporate must bill the units according to the actual consumption which will in turn increase the administrative burden placed on the body corporate every month. For this reason, a body corporate should consider the above factors before deciding to apply for the reseller tariff as the discount provided may not offset the cost of funding the administrative burden created.

In the authors' opinion the introduction of the tariff is a step in the right direction towards regulating the electricity reseller market and presents a potential saving to a number of consumers, most notably body corporates in Johannesburg. The sector, however, is still unregulated and certain issues, such as the authority of resellers to disconnect services when amounts are unpaid, remains unclear.

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