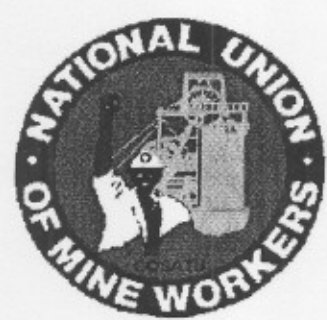


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COSATU, NUM, NUMSA AND SAMWU SUBMISSION ON THE ELECTRICITY REGULATION AMENDMENT BILL [B20-2006]



Presented to the Portfolio Committee on Minerals & Energy

11 October 2006

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1. INTRODUCTION

1.1 *Background*

Of necessity, both the Reconstruction and Development Programme (RDP) and the White Paper on Energy (hereinafter the White Paper) could not have explicitly articulated a detailed end-state vision of the restructuring of the Electricity Supply (ESI) and Electricity Distribution Industry (EDI). However, the Department of Minerals and Energy (DME) commissioned a restructuring blueprint by Price Waterhouse Coopers in 2001, whose recommendation generally called for a managed-liberalisation along the lines of the United Kingdom and some states in the United States of America. Consistent with this restructuring paradigm, the DME introduced the Draft Electricity Distribution Industry Restructuring Bill and the Draft Electricity Pricing Policy in 2003 and 2004, respectively. To some extent, both documents began to point to what might be the DME's end-state vision of the restructuring effort, even though as the Congress of South African Trade Unions (COSATU), National Union of Mineworkers (NUM), South African Municipal Workers' Union (SAMWU) and the National Union of Metalworkers of South Africa (NUMSA) we are opposed to the mooted reform model contained in these documents.¹

In our understanding, based on the May 2004 State of Nation address by the President and the Minister of Public Enterprises' 2004-05 budget vote speech, there has been a shift from the main thrust of the Price Waterhouse Coopers's blueprint, hence the withdrawal of both this draft legislation and policy. Thus, we are unsure as to the status of the "Pro-competitive Reform Programme", which

¹ See the Joint submission by COSATU, NUM, NUMSA and SAMWU on the Electricity Distribution Industry Restructuring Bill submitted to the Department of Minerals and Energy, 09 June 2003 and COSATU's submission on the Draft Electricity Pricing Policy submitted to the Department of Minerals and Energy, 03 August 2004. <http://www.cosatu.org.za>

has not been made public for engagement with stakeholders, at least as far as labour is concerned.

However, we are concerned that the DME is now embarking on a piecemeal and tentative restructuring drive of the ESI and EDI without any explicit policy framework. Hence, in our analysis, it would appear that some of the features of the Price Waterhouse Coopers's blueprint are stealthily advanced as reflected in the provisions of the Draft Electricity Regulation Bill tabled at the Development Chamber of NEDLAC and to some extent in the Electricity Regulation Act and on the Electricity Regulation Amendment Bill [B20-2006], hereinafter "the Bill".

1.2 Procedural Concerns

We have serious concerns regarding the failure to consult with key stakeholders, including labour, despite the Bill's implications for our membership and the community at large. It is alarming that in the Bill's memorandum the DME claims to have consulted with NEDLAC and COSATU despite no such consultations having taken place.

In fact noting the socio-economic and labour implications of the Bill it should have been considered at NEDLAC *prior* to it having been tabled in Parliament. The previous Bill (ie the Electricity Regulation Bill of 2005) was considered at NEDLAC but excluded discussion of the key aspects of the current Bill. Further, NEDLAC agreed that there was a need for further deliberation on the following areas:

- a subsidization and tariff setting framework for reticulation at a municipal level,
- Electricity Pricing Policy Framework
- Government's clear end-state vision for the restructuring of the sector.

However, this subsequent NEDLAC process has not as yet been undertaken.

Further, section 78 the Municipal Systems Act of 2000 prescribes detailed steps that must be taken by a municipality when it has to decide on mechanisms to provide a service or to use so-called "external" mechanisms. These include assessing the expected effect on the environment, human health and safety, development, job creation and unemployment. As such each municipality is required to consult with organised labour and the local community. However, this process has ignored the requirements of the Municipal Systems Act.

1.3 Broad Substantive Concerns

In its previous submissions on the restructuring of the electricity industry, COSATU and its affiliates in the sector have consistently expressed our concerns regarding implications for employment security for workers in the industry. Similarly, we are also concerned about some of the provisions of this Bill in the

light of the fact that part of the Bill's stated objectives is to introduce private sector participation in electricity reticulation services in the form of so-called external service providers.

We have already outlined our concerns regarding employment security and the lack of consultation with organised labour, which is imperative taking into account the Bill's emphasis on using "external" service providers. Further, we are concerned that this emphasises increased privatisation at the expense of delivery of services to communities and addressing historical inequalities.

The Bill was drafted through a rushed process and as a result it contains contradictions and serious shortcomings as seen in the chapter on reticulation that provides municipalities' abdication of their constitutional responsibilities in delivering electricity.

Of concern is the failure to fulfil commitments to implement cross-subsidization of residential end-users by industry. In fact to the contrary during the introduction of the REDs a department was created within Eskom called Key SACS (Key Sales and Customer Services) to supply and distribute electricity directly to industrial/commercial end-users such as ISCOR and ALUSAF. This could render the RED unsustainable as the issue of cross-subsidization is not fulfilled with companies being the main consumers of electricity. Accordingly we are of the view that the Bill should have set out clearly the process of cross-subsidization and the EDI holding company should have been established as a permanent (as opposed to transitional) structure to ensure that this was carried out.

1.4 Grounds for Withdrawal of the Bill

In accordance with the various concerns noted above we are calling for the withdrawal of the Bill on the grounds summarised below:

1. Lack of consultation with stakeholders despite contrary claims in the Bill's memorandum that there was consultation at NEDLAC and with COSATU,
2. The Bill should be suspended until NEDLAC has been given the opportunity to consider it in accordance with the requirements applicable to draft legislation or policy that have labour or socio-economic implications,
3. There is a need to first resolve the process invoked in NEDLAC through section 77 of the Labour Relations Act in respect of the restructuring of the energy sector,
4. Failure to comply with consultation requirements of section 78 of the Municipal System Act.
5. In line with the resolution of COSATU's 8th National Congress on electricity restructuring, we reject the current restructuring process until a proper analysis is undertaken of the functionality and sustainability of the REDs and the cost implications as well as the implications for municipal and Eskom electricity distribution workers.

6. Inconsistency of the Bill with ANC policy and previous portfolio committee positions on the six wall-to-wall REDs,
7. The Bill's emphasis on private sector involvement in the electricity sector,
8. Lack of clarity on a policy for a tariff structure,
9. Lack of clarity on the end-state vision of the national holding company and restructuring of the energy sector as a whole.
10. The failure to deal adequately with previous commitments regarding cross subsidisation from industry to residential end-users.²

Accordingly we are urgently calling for the current process on the Bill to be suspended until the completion of a public summit at a national level to consider the above concerns and restructuring of the energy sector as a whole.

2. SPECIFIC COMMENTS ON THE BILL

Due to the contradictions, shortcomings and confusion caused by bad drafting of this Bill, our comments on specific provisions will also include cross- references to the Electricity Regulation Act 4 of 2006 (hereinafter "the Act") particularly in relation to definitions to illustrate our contentions.

2.1 Definitions

We propose the deletion of the definition of "customer" under section 1 of the Act as it duplicates the definition of "end user", which is more appropriate for the purposes of this Act. Furthermore, we are concerned the word customer emphasises the commodification and profits associated with the distribution of electricity.

We propose the amendment of the current definition of "distributor" in the Act by replacing the words "person who distributes electricity" with the words "public entity that distributes electricity", since this would remove the emphasis on the privatisation and commodification of electricity.

We propose the inclusion of a definition of "EDI Holdings", which state that it "means the Electricity Distribution Industry Holdings company.

We propose the deletion of the definition of "price" as this term duplicates the definition of "tariff".

We propose the inclusion of a definition of a "RED" with the words that it "means a Regional Electricity Distributor", in order to deal with the current omission.

² See paragraph 4.5. of the NEDLAC Report on the Electricity Regulation Bill, 2005.

We propose the deletion of the definition of "**service delivery agreement**" since it provides for the participation of private sector in electricity delivery, therefore amounting to the abdication of the constitutional obligation of municipalities and that of the RED's.

We propose the deletion of the definition of "**service provider**" for the same reasons mentioned above in relation to the definition of service delivery agreements.

2.2 Chapter IV: Reticulation

We propose the deletion of this entire chapter because its content does not provide an enabling legislative framework for Municipalities to reticulate electricity as they are enjoined by the Constitution of the Country. Instead it expressly provides for the private sector delivery of the electricity. This chapter is conspicuously silent on the provision of cross subsidies and free basic electricity to the Working Class and the Poor. The recent decision by the Minerals and Energy Portfolio Committee on the relevance of the Six REDs that are based on wall-to-wall boundaries has not been factored in, particularly the role to be played by these REDs in the delivery of electricity to communities/areas outside of the Municipality boundaries. There are contradictions on competency in determining certain policies such as the policy on tariffs. The Bill assumes that there are national norms and standards in existence given the constant reference as could be seen under the policies and by-laws section.

We are of a firm view that this chapter read together with the rest of the Bill requires redrafting with clear, conscious and due regard for the South African Constitution and the standing policies on Energy of the ruling party being the African National Congress (ANC), particularly if we are to address the historical inequalities existing in relation to the distribution and supply of electricity to communities.

2.3 Amendment of section 44 of Act 4 of 2006

We propose the deletion of the words "service provider" under clause 5 of the Bill on the grounds that it is inappropriate and reflects attempts to create conditions for eventual privatisation. We further propose the deletion of this word wherever it appears in the Act.

2.4 Amendment of Section 47 of Act 4 of 2006

We propose the deletion of clause 6 in its entirety since it intends enabling the making of regulations in relation to the chapter on "reticulation", which we have called for the deletion of in its entirety.

2.5 *The Memorandum on the objects of the Bill*

Objects

Paragraph 2 of the memorandum sets out the objects of the Bill.

Bullet one identifies as an object the provision of a "framework for setting of tariffs by municipalities". However, this reflects a contradiction of its powers, as tariffs are determined by the NERSA not municipalities.

Bullet three identifies an objective of the Bill being to empower the Minister of Minerals and Energy to "prescribe key performance indicators for municipalities in relation to reticulation services". This point encourages jurisdictional problems between DME and the Department of Provincial and Local Government (DPLG) since the performance of municipalities is a prerogative of DPLG as set out in line with the Municipal Systems Act.

Bullet four identifies the objective of providing for the relationship between municipalities and service providers that will provide for reticulation services. We propose the deletion of this objective since yet again privatisation is being emphasised.

Departments/Organisations Consulted

Paragraph 3 identifies the departments and organisations consulted prior to the Bill being tabled in Parliament. We note with concern that the memorandum incorrectly reflects that there has been consultation with COSATU and NEDLAC on this particular Bill.

3. CONCLUSION

In conclusion we are appealing to the DME through the Portfolio Committee to heed our clarion calls to appreciate the impact of this electricity industry restructuring process on our members, the working class and poor people in general. Therefore, any haste and short circuiting approach is bound to yield negative developments in our transition. As labour we have been calling for a national energy summit since 2003 and trust that Parliament can and will create that space for the important and meaningful engagement of stakeholders.

Once more we thank you the honourable chairperson and portfolio committee members for allowing us the opportunity to address this august chamber.

Thank you