OUTA

ORGANISATION UNDOING TAX ABUSE

14 January 2022

COMMENTS ON ESKOM'S MULTI-YEAR PRICE DETERMINATION APPLICATION (MYPD5)

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1. INTRODUCTION

1.1 The Organisation Undoing Tax Abuse ("OUTA") is pleased to be considered as a valuable stakeholder in energy related matters that widely affect the public interest.

1.2 By way of introduction, OUTA is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. We envision a prosperous country, with an organised, engaged and empowered civil society that ensures responsible use of tax revenues.

1.3 Part and parcel to OUTA's mission is the challenging of legislation and regulatory environment, this includes participating and engaging with government on Eskom Holdings SOC Ltd ("Eskom") application for the Multi-Year Price Determination ("MYPD5").

1.4 OUTA appreciates the opportunity to participate in the process, specifically as a representative of broader civil society. As you may be aware, OUTA has participated in the MYPD processes in the past, the most recent being 2017 and 2018 respectively as well as commenting on the proposed MYPD methodology changes in October 2021.

1.5 According to the National Energy Regulator of South Africa ("NERSA's") consultation paper on the MYPD5, its actions are guided by, amongst others, the Electricity Regulation Act, 2006 ("the ERA"), the Electricity Pricing Policy ("EPP") and the regulatory framework. For ease of reference, the table is illustrated below.

Table 8.1-1 - Interim Eskom MYPD5 tariff application

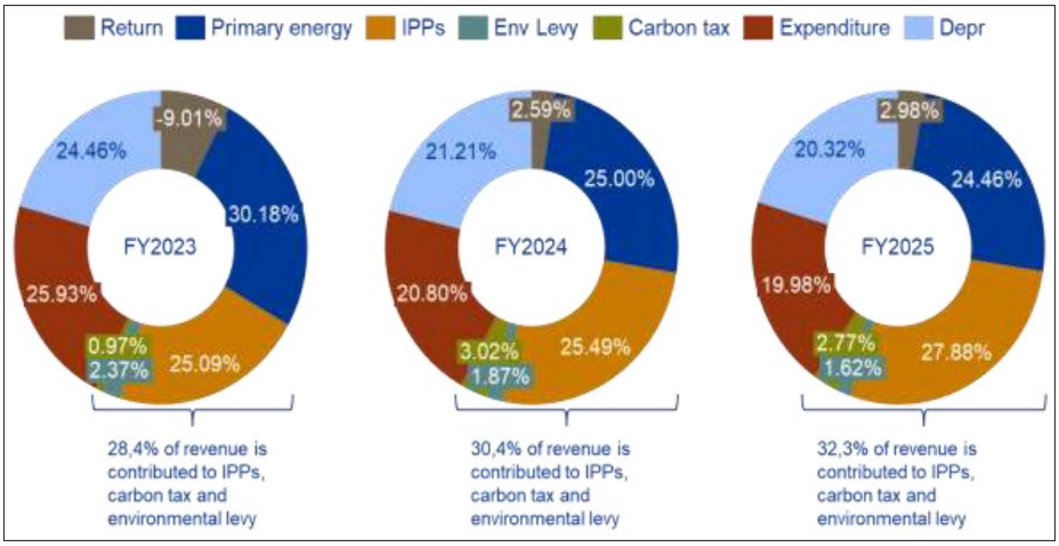
Eskom's FY 2022/23 MYPD 5 tariff increase	
R'm	**2022/23**
FY 2022/23 Revenue application as applied	279 018
MYPD 3 RCA (Yr 2,3,4)	7 776
RCA arising (2018/19)	6 150
Approved STPPP	742
2019/20 RCA	3 461
2020/21 RCA As applied	10 720
Government injection	46 000
Total Revenue from standard customers	353 867
Sales Volumes(GWh sold)	171 549
Production Volumes (GWh sent out)	180 475
Price bases on sales volumes	206,28
Price bases on Production volumes	**196,08**
Percentage Price Increase based on sales	***54,35%***
Percentage Price Increase based on production	**49,6%**

1.6 It is difficult to understand how Eskom could hope to impose such a large percentage increase on to its customers. NERSA also needs to consider the added impact of such an increase as it is passed through to the municipalities.

2. ESKOM APPROACH

2.1 OUTA is disappointed by Eskom's approach toward tariff applications. It is difficult to understand how Eskom continues to regard certain costs such as the environmental levy and the carbon tax, as outside of its control. This is disingenuous as these costs are directly related to its use of coal. Figure 1 from the Eskom Summary submission is referred to below for ease of reference.

FIGURE 1: KEY ELEMENTS OF ALLOWABLE REVENUE FOR MYPD5 APPLICATION



2.2 In 2011, the renewable energy power producer programme was initiated, and then stalled by Eskom refusing to sign PPAs for the renewable plants. This halt was ended in 2018 but this delay has impacted on the progress of the transition from fossil to renewables. Eskom continued to invest in new coal and although the Chief Executive Officer ("CEO") of Eskom presented its plans to the Climate Change Commission on Eskom move away from coal, the Generation application for the MYPD5 2022/23 year continues to focus on the need to increase the amount of coal and the need for coal related expenditure. At no point in the Eskom Generation document that we could see, did Eskom refer to an Eskom strategy for replacing its own power stations with renewable power.

2.3 Eskom continues to bemoan the environmental costs it is incurring, and electricity consumers have no option but to pay for them as there is little choice of supplier. The options are to go off grid and be self-reliant or to buy from Eskom or from a municipality which has purchased from Eskom. Most households are cash strapped and financially insecure after 2 years of COVID-19 economic lockdown and cannot afford the capital outlay for a solar household system for example.

2.4 While complaining about the environmental costs and attempting to represent them as outside of the primary energy costs, Eskom is also failing to acknowledge the value of the renewable independent power producers ("IPPs") in their role in alleviating load shedding due to Eskom's maintenance backlog.

2.5 Eskom is presenting the renewable energy IPPs as a burden we have to bear without seemingly to acknowledge the climate crisis and the enormous health burden that generations of people have borne due to the toxin emitted by the Eskom generation fleet.

2.6 Eskom is currently undergoing a restructuring exercise which should result in Eskom generation having to compete with more affordable options. The impact of this restructuring on the economic survival of the Eskom fleet does not appear to be taken into consideration.

2.7 In its generation application document, Eskom acknowledges that "Primary energy costs are under severe pressure due to the coal sourcing environment". This is explained part by the international market for low quality coal which was not in demand internationally before. However, given the shortage of coal, Eskom does not propose alternatives but simply states "and significant capital expenditure is required in the cost-plus mines to ensure the continued supply of reasonably priced coal that is assumed in this application". OUTA believes that given the corruption that has occurred in the coal procurement for Eskom, NERSA should scrutinise these supply plans robustly.

3. ESKOM ASSUMPTIONS

3.1 Eskom has assumed that savings due to Energy Efficiency Demand Side Management ("EEDSM") will continue but it is difficult to understand this conclusion given that increasing the price of electricity would dampen sales.

3.2 Eskom's response to price elasticity appears to confuse rather than elucidate. Eskom acknowledges that rapid increases in electricity prices over recent years, but then uses a 30-year study to claim that *"electricity demand has remained price inelastic"*. Eskom *acknowledges "that is primarily on the back of a lack of viable substitutes"*, refers to the Integrated Resource Plan ("IRP") to try to justify its price path and then further acknowledging that it is *"common cause that as the electricity price increases, some segments of demand may be lost"*.

3.3 27% of children in South Africa under 5 years old are severely malnourished *"eroding their physical health and cognitive development and undermining their education and economic prospects…."* (South African Child Gauge 2020 by UCT Children's Institute). Eskom appears quite callous in its contention that *"this speaks to the welfare and affordability considerations in the country. However these considerations must be balanced with the need to recover efficient costs in order to make electricity available in the first place".*

3.4 In essence what OUTA takes from this is that Eskom is not focused on providing electricity to enable all South Africans to grow but is only focused on providing electricity to those wealthy enough to pay the ever-increasing tariffs.

3.5 Eskom's response to an increase of distributed generation that might result in a utility death spiral is to shift the tariff design to one that will enable them to continue to make money even if they don't provide electricity. This is where capacity and fixed charges to customers can exceed the energy charges.

3.6 Such an attitude reveals the urgent necessity for tariff reform that is aligned with a new ESI system. OUTA rejects what appears to be a blatant attempt to continue business as usual from an electricity costing perspective without any attempt to provide affordable electricity. NERSA's mandate includes safeguarding the needs of customers; and facilitating universal access to electricity, and OUTA would urge NERSA to act on its mandate.

3.7 Eskom has admitted that its sales growth has trended slightly downwards and that the *"outlook remains relatively depressed in the years ahead".* However, there was little discussion on the impact of increased distribution generation.

3.8 We attach the OUTA submission into the 2019 Regulatory Clearing Account ("RCA") application where we outlined various factors which reduced demand. We believe that such variances continue, and that Eskom should demonstrate in its MYPD5 application how it has learnt from the MYPD4 application, the subsequent RCA variances and ensure that it reduces the need for such RCA applications.

4. ENVIRONMENTAL LEVY AND CARBON TAX

4.1 Eskom states that the contribution for FY2022/23 will increase from 3% to 5% and then drop to 4%, claiming that this contribution accounts for over 8.5c/kWh. Such costs should not be reflected as stand-alone but should be added to the cost of primary energy as they accrue to fossil generated energy.

5. CAPITAL EXPENDITURE ON AGEING PLANTS

5.1 Generation plants have a fixed life span and Eskom lists power stations that will be assumed to continue for their 50-year lifetime unless a dead stop date has been determined. According to Eskom, a dead stop date is where the unit requires significant interventions, especially requiring a large capex input before it can continue to operate. It is not clear how these decisions are made as Koeberg is not included in this list.

5.2 For example: Peaking and Koeberg units are assumed to be decommissioning at 60 years. Given that Koeberg was supposed to shut down in 2024 and there is no explanation of why Koeberg has been extended nor has any approval been obtained from the NNR for this, it is not clear how Eskom has justified the capex on the extension.

5.3 NERSA needs to interrogate any capital expenditure for older power plants to ensure that the refurbishments are economical, and not simply to avoid shutting down a power plant. If power plants have reached their economic end of life, then Eskom should be directed to use the capex to build new renewable generation.

5.4 Robust interrogations of Eskom's proposed costings would enable NERSA to ascertain that Eskom was not just throwing good money after bad. We cannot afford stranded assets with Eskom assuming that these costs would continue to be passed through to consumers.

6. PRUDENCY

6.1 The prudency test considers expenditure that a reasonable person would be expected to incur under the same circumstances that are encountered by the licensee at the time the decision had to be made.

6.2 OUTA has spent some time detailing its views on Eskom's expenditure and whether it is prudent in OUTA's submission on the RCA applications. We attach the RCA submission to this submission, marked **ANNEXURE "A"**.

6.3 As we outlined in our submission to the 2019 RCA, prudent action would mean that Eskom should be able to show how it has accounted for the changing context in which it operates and how, despite genuine attempts to do so, it has failed to generate the predicted revenue. It is OUTA's contention that Eskom fails dismally in this regard and accordingly should not be allowed any additional revenue but should meet its shortfall through other means.

6.4 OUTA believes that Eskom has consistently failed to carry out its homework in predicting demand, and therefore its revenue, and in its choice of energy supply has failed to apply a consistent comparative method.

6.5 On a broader strategic level looking at energy planning and energy security for South Africa going forward, the idea of a mechanism to allow Eskom to return to the Regulator every year to gain approval for unforeseen cost increases leads to inconsistency and adds to the economic uncertainty in the country.

6.6 OUTA would suggest that the MYPD provides the basis for a “contract” between society and Eskom, a price trajectory which South Africans can use to grow the economy. The rules that allow Eskom to continually apply and receive additional tariff increases based on reasons that in general fail to stand up to scrutiny, appear to civil society to amount to blackmail: “If we don’t get an increase, the lights will go out”. This is an unsustainable approach to electricity provision and has certainly “attracted further risk” to the economy and society in general.

6.7 NERSA has outlined several factors relating to corruption and fraud at Eskom and the extent to monies that have been fraudulently spent in “procurement malfeasance”. In our view, NERSA’s discretion and its applying of the rules must ensure that electricity consumers do not pay for corruption, but that Eskom is asked to find that money internally.

6.8 The presentation of Eskom’s generation costs as averaging makes it difficult to understand exactly what the reasons for the low availability factor of the fleet are, and to unpack which power stations have contributed the worst to the rising costs of power generation with the decrease of power output over the last years.

7. MEASURES TO ACCOUNT FOR FACTORS OUTSIDE OF ESKOM’S CONTROL

7.1 In the Eskom Generation application document, Eskom submits a plan to place certain power station into cold storage as part of a strategy to address the failure of additional generation capacity outside of Eskom to come online. OUTA believes that this is a fair action on Eskom’s part, but it raises the question of NERSA’s role in ensuring that that the IPP procurement processes, the rules for unlocking the potential of the 100 MW registration process are implemented as a matter of urgency.

7.2 Eskom cannot be held responsible for the failure of DMRE and NERSA to ensure that additional generation capacity is added to the grid.

8. RECOMMENDATIONS

8.1 NERSA's consultation paper asks three main questions with various subsections. The questions are not new, and we have highlighted our main concerns in the paragraphs above. In addition, we attach our submission to the MYPD4 and the RCA.

8.2 OUTA submitted its comments on the MYPD4 and we would reiterate the same recommendations here:

8.2.1 NERSA must apply a "heavy-handed regulatory approach" when dealing with Eskom, especially on its RCA applications to minimise the negative implications on the economy and minimise the cost of doing business.

8.2.2 NERSA must validate the assumptions used in the MYPD5 application.

8.2.3 In exercising its regulatory oversight, NERSA must request a written commitment from the Eskom board to ensure there are set compliance parameters that must be adhered to during any given control cycle from both regulatory and corporate governance point of view to minimise Eskom's reliance on the RCA process.

8.2.4 NERSA must ensure that it plays rigorous regulatory oversight to avoid any future similar "man-made" situation where emergency procurement of coal is instigated to serve vested interests in favour of certain entities at the expense of electricity users. Eskom coal procurement needs to transparent.

8.3 The calculations presented by NERSA outlining that Eskom receive increases of average 31 or 32% cannot be acceptable at any time, never mind in the time of recovering from COVID-19.

8.4 For this FY2022/23 application, NERSA should grant a maximum of a consumer price index (CPI) tariff increase; if the economy is to recover from COVID, electricity needs to be kept to an affordable level in order to be an economic enabler. Eskom’s business interests cannot be allowed to jeopardise economic recovery, and it is in Eskom’s own interest to grow the economy in order to grow electricity sales.