

AfriForum v NERSA 2024: What Does This Judgement Mean for South Africans?

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INTRODUCTION

On 28 June 2024, the Pretoria High Court issued a court order in a matter of AfriForum NPC v National Energy Regulator of South Africa and others¹, regarding the approval of applications brought by municipalities to increase electricity tariffs.

The AfriForum lodged an urgent application to the Pretoria High Court to challenge the unlawfulness of the National Energy Regulator of South Africa (NERSA)'s practice of approving applications of municipalities concerning an increase of electricity tariffs without complying with procedural requirements. Municipalities are required to supplement their electricity tariff applications with a cost of supply study as a prerequisite for approval of such electricity tariff applications.

COURT RULING

The court ruled that the practice of NERSA to approve electricity tariffs applications brought by municipalities that have not submitted a prerequisite cost of supply study is unlawful, invalid and of no force and effect.

OVERVIEW OF THE COURT ORDER

The High Court ruled that NERSA is not permitted to evaluate and approve municipalities' applications regarding electricity tariffs for the 2024/2025 financial year and the following financial year if municipalities omitted to submit the cost of supply study in a timely manner.

Municipalities who failed to timeously submit the cost of supply studies are restricted from increasing electricity tariffs and they must continue to levy electricity rate tariffs on the same tariff that was applied in the 2023/2024 municipal financial year until their applications have been approved by NERSA in a procedurally compliant manner.

Thus, municipalities are required to submit a supporting cost of supply study in addition to their electricity tariffs applications. If such applications are procedurally and

legally compliant with the Notice to Municipal Licensed Electricity Distributors NERSA shall approve such electricity tariff application within one month of receiving the prerequisite cost of supply study. It must be noted that municipalities have been granted a period of 60 days from 28 June 2024 to submit a compliant application to NERSA.

CONSEQUENCE FOR ALL SOUTH AFRICANS

- In order for NERSA to approve electricity tariffs applications of municipalities, such municipalities are required to submit a cost of supply study in addition to their electricity tariffs application. NERSA is prohibited from considering and approving applications that are not supported by the cost of supply study.
- Municipalities who fail to timeously submit the cost of supply study in addition to their electricity tariffs applications must continue levying electricity rate tariffs based on the existing rates approved for the 2023/2024 municipal financial year.
- However, Municipalities have 60 days from 28 June 2024 to amend their applications for reconsideration by submitting the cost of supply study.
- Only 66 municipalities in South Africa had submitted cost of supply studies when they originally made application; these are included in a list which is annexed to the court order. These municipalities are entitled to increase their tariffs with effect from 1 July 2024.
- If your municipality is one listed in the annexure to the court order, your municipality may lawfully increase its electricity tariffs from 1 July 2024, in accordance with the approval already given by NERSA.
- If your municipality is any other municipality, it is not permitted to increase its electricity tariffs on 1 July 2024, and it may only thereafter increase them in accordance with an approval given by NERSA after the municipality has submitted its cost of supply study.



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¹AfriForum NPC v National Energy Regulator of South Africa and Others (unreported) case number 2023/042792