



**ESKOM HOLDINGS SOC LIMITED:
SUPPLEMENTARY REVENUE APPLICATION IN
ACCORDANCE WITH THE HIGH COURT JUDGEMENT ON
ESKOM'S ONE-YEAR REVENUE APPLICATION
2018/19 FINANCIAL YEAR**

CONSULTATION PAPER

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Abbreviations and Acronyms

DMP	Demand Market Participation
DSLI	Demand Supply Loss Index
DSM	Demand Side Management
EAF	Energy Availability Factor
EEDSM	Energy Efficiency and Demand Side Management
ELS	Electricity Subcommittee
ER	Energy Regulator (NERSA board)
ERTSA	Eskom's Retail Tariff Structural Adjustments
EUF	Energy Utilisation Factor
GDP	Gross Domestic Product
GLF	Generation Load Factor
GWh	Gigawatt hour
IDM	Integrated Demand Management
IPP	Independent Power Producer
IRP	Integrated Resources Plan
km	Kilometre
kWh	Kilowatt hour
MW	Megawatt
MWh	Megawatt hour
MYPD	Multi-Year Price Determination
NERSA	National Energy Regulator of South Africa
OCGT	Open Cycle Gas Turbine
Opex	Operating expenditure
PAJA	Promotion of Administrative Justice Act
RCA	Regulatory Clearing Account
REC	Regulator Executive Committee
REIPP	Renewable Energy Independent Power Producer
SOC	State-Owned Company
UoS	Use-of-System Charges

1 EXECUTIVE SUMMARY

- 1.1 South African macro-economic environment is faced with challenges such as the shock of 51% Gross Domestic Product (GDP) collapse in the second quarter of 2020, following a decrease of 2.1% in the first quarter of 2020. This is the biggest quarterly fall in economic activity since the first quarter of 2009, when the economy was affected by the global financial crisis. The biggest contributors to the negative growth in GDP were the manufacturing (-10.8%), trade (-10.5%) and transport (-6.6%) sectors, followed by other sectors such as mining (-6%) and finance (-5.4%).
- 1.2 The uncertainty about the economic recovery, as lockdown restrictions are eased, suggests that the economic outlook for 2020 may be even worse than the latest National Treasury and South African Reserve bank forecasts of -7% and -8.2% in 2020 GDP, respectively. It is expected that economic activity will further decline once the widespread effects of the shocks to the economy have been quantified beyond the 2020 second-quarter performance. Some economists are predicting an even worse outcome with a double-digit GDP reduction in 2020.
- 1.3 There is an increasing risk that the worsening macro-economic challenges, which are exacerbated by the effects of the COVID-19 pandemic and rising electricity prices, will drive more electricity consumers (industrial, commercial and residential) into default (unaffordable electricity) and ultimately affect the sustainability of Eskom. There is no doubt that the rebound of key economic sectors such as manufacturing, trade, transport, mining and construction from negative growth will be underpinned by the costs of electricity and reliability of supply.
- 1.4 All these factors make it difficult for State-Owned Entities (SOEs) to raise capital and funding. It is also difficult for government to continue to support SOE's funding activities through credit guarantees.
- 1.5 As a basic and socio-economic commodity, electricity is also a major input cost to industry and manufacturing. In fact, competitively priced electricity is, in essence, the cornerstone on which economic growth is built. The prolonged load shedding as a result of a system that has been capacity constrained during the period in question as well as up to date remains a challenge. The relief provided by the reduced demand during Covid 19 lockdown was short lived as load shedding resumed again from July 2020 as lockdown restriction started to be eased, the system therefore remains constrained and is anticipated to remain constrained in the medium term. Eskom's failure to invest in its infrastructure will continue to spur the environment of low economic growth even further.

1.6 This consultation paper is structured as follows: executive summary, introduction, legal basis, grounds for judgement, Eskom application, NERSA analysis, consultation process and questions thereof.

2 INTRODUCTION

2.1 The National Energy Regulator of South Africa (NERSA) is in the process of reviewing Eskom’s supplementary application, as directed by the High Court, with the aim of finalising the review by 27 January 2021. However, prior to the decision, the Energy Regulator will embark on a due process of stakeholder consultations. As part of this process, NERSA is requesting stakeholders to comment on the issues raised in this consultation paper.

2.2 On 15 December 2017, the Energy Regulator approved a total of R190 348billion expected revenues from all customers for Eskom’s 2018/19 financial year. This decision was taken on review by Eskom.

2.3 On 13 July 2020, Eskom submitted its application in accordance with the High Court judgement as stipulated above (see Annexure A). The High Court order allows for Eskom to apply to NERSA to make a supplementary revenue application as stated in order 3 of the judgement. This supplementary tariff determination will allow for expended costs to which Eskom would have been entitled to in the original revenue determination, had the revenue decision been lawfully made.

2.4 The fourth Multi-Year Price Determination (MYPD4) Methodology and the court judgement was used for the evaluation of Eskom’s revenue and Regulatory Clearing Account (RCA) applications.

Table 1: Summary of revenue in supplementary application

Revenue Related Expended Cost Item	Revenue (R'm)
Coal costs	1 555
Independent Power Producer costs related to use of system (UOS)	101
Operating costs	2 425
Integrated Demand management costs	6
Sub Total	4 087
Carrying costs (assuming delay of 3 years) (with recovery in FY 2021/22) (At 10% interest per year, compounded annually)	1 353
Total	5 440

2.5 NERSA was cognisant of the challenges Eskom faced regarding its ability to operate as a going concern, including its financial stability and liquidity.

However, it is of paramount importance that the RCAs are processed strictly within the prescripts of the NERSA Methodology, applicable laws and policy to ensure that the decision to be made is not open to being reviewed.

- 2.6 The regulatory process has been disrupted by having the court judgement that ordered the RCA to be redone. NERSA is required to comply with the court judgement otherwise, non-compliance with the judgement is a criminal offence (contempt of court).
- 2.7 The MYPD4 methodology (attached as **Annexure C**) and the judgement will be used to assess these applications. The Methodology started from **1 April 2018 to 31 March 2022**. The objectives of MYPD4 Methodology are:
- to ensure Eskom's sustainability as a business and limit the risk of excess or inadequate returns, while providing incentives for new investment;
 - to ensure reasonable tariff stability and smoothed changes over time, consistent with socio-economic objectives of the Government;
 - to appropriately allocate risk between Eskom and its customers;
 - to provide efficiency incentives without leading to unintended consequences of regulation on performance;
 - to provide a systematic basis for revenue/tariff setting; and
 - to ensure consistency between price control periods.
- 2.8 The MYPD methodology does not preclude the Energy Regulator from applying reasonable judgement on Eskom's revenue after due consideration of what may be in the interest of the overall South African economy and public interest.
- 2.9 Section 10 of the guideline for prudency assessment that deals with operating expenditure is used to assess prudency. This is to ensure that the decision to spend the costs is consistent with good practice, is reasonable and complies with sound business practice.
- 2.10 Section 6 of the guideline for prudency deals with three concepts, namely prudency, efficiency and reasonableness, that emerge from the act and methodology. These three concepts are closely linked and complementary to each other.
- 2.11 The High Court Order allows Eskom to apply to NERSA to make a supplementary revenue determination application. The supplementary revenue application allows for expended costs, to which Eskom would have been entitled in the original revenue determination for the year 2018/19.

- 2.12 The amounts expended will be aligned with the actual amounts submitted in the RCA application, to the extent applicable. The detailed motivation for these expended costs has been provided for Eskom's RCA application.
- 2.13 This application relates to the 2018/19 RCA application. With the RCA being a claw-back mechanism, its key purpose over and above its risk management function, is to ensure that both the industry and consumers are treated fairly and are not subject to unfair gains or losses that are as a result of incorrect forecasting, inaccurate information and system shocks. The following issues have been identified as key risk areas that must be updated to be aligned with to the MYPD Methodology objectives:
- Coal costs 1
 - Independent Power Producer costs related to use of system (UOS)
 - Operating costs
 - Integrated Demand management costs
 - Carrying costs (assuming delay of 3 years) (with recovery in FY 2021/22) (At 10% interest per year, compounded annually)

3 LEGAL BASIS

- 3.1 Section 4(c) of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) ('the NERA') empowers NERSA with the responsibility to undertake the functions detailed in section 4 of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) ('the ERA').
- 3.2 The ERA sets out the powers and functions of NERSA. Relevant to this application is section 4(a)(ii), wherein NERSA is empowered and required to regulate prices and tariffs.
- 3.3 In performing its mandated functions, NERSA is required to ensure that the following objects are achieved:
- a) The efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in South Africa;
 - b) The interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic;
 - c) Investment in the electricity supply industry is facilitated;
 - d) Universal access to electricity is facilitated;
 - e) The use of diverse energy sources and energy efficiency is promoted;

- f) Competitiveness and customer and end user choice are promoted, and;
- g) A fair balance between the interests of customers and end users, licensees, investors in the electricity supply industry and the public is facilitated.

3.4 Eskom's application is in terms of the court judgement of 10 March 2020, which ordered the following (see Annexure B):

- a. The decision of the respondent ("NERSA") in relation to the Eskom application for tariff increases for the 2018/2019 year was reviewed and set aside by the High Court.
- b. Paragraph 1 of the order does not affect the validity of the tariff increases that has been implemented by Eskom in respect of the 2018/19 tariff year.
- c. Eskom is granted leave to apply to NERSA within 60 days of this Court's order or the final 2018/19 Regulatory Clearing Account ("RCA") decision, whichever is the later, to make a supplementary tariff determination granting Eskom any additional amounts which it has expended in the 2018/19 tariff year and to which it would have been entitled had the original tariff determination been made lawfully, in accordance with the principles established by this Court's judgment in the matter under the above-mentioned case.
- d. Any additional amounts awarded by NERSA in terms of the process described in paragraph 3 above are to be added to the RCA balance and liquidated in accordance with additional tariff increases to be determined by NERSA in the process contemplated by paragraph 3.
- e. NERSA is to pay Eskom's costs in this application, including the costs of two counsel.

3.5 Although the judicial review was on the one-year revenue application, the judgement demands that Eskom make an application on the actual costs incurred during the year that the decision was implemented. The court went further to accept that the application should also recognise that NERSA has considered the RCA and it has an impact on the supplementary application Eskom is supposed to make.

3.6 The court judgement has temporarily redrafted the regulatory framework regarding the consideration of Eskom's applications in that the approved regulatory framework through the MYPD Methodology recognises only

revenue applications and RCA applications. The court has enabled Eskom to bring a supplementary application to the RCA that has already been considered. The greatest distinction is that Eskom's application is not on the modification of the forecast that was considered during the revenue application, but on the cost that Eskom has incurred during the implementation of the revenue determination decision, which, according to Eskom, should have been approved at the time.

- 3.7 The court has located the supplementary application within the realm of RCA consideration established by the Methodology, because the court ruled that the application should be based on expended costs. The judgement does not interfere with the regulatory space wherein NERSA must observe its processes to consider the application, otherwise NERSA would be exposing itself to another legal challenge. Despite the judgement ordering Eskom to submit an application to NERSA, NERSA must observe all tenets of laws applicable to decision making, otherwise the decision will be open to judicial review on the basis of procedural unfairness.
- 3.8 The court has linked the regulatory process that NERSA should engage in, with the RCA that has already been dealt with. The court judgement requires that the amount to be decided on in the supplementary application must be added to the amount already determined in the related RCA. *Can NERSA avoid finalising the supplementary application in time to add to the RCA already determined?* To avoid being found to be in contempt of the court in this regard, NERSA must agree with Eskom beforehand on the conclusion of the supplementary application if it is not going to be added in the RCA. Alternatively, NERSA must make an application to the court asking for the condonation of its inability to conclude the supplementary application for addition to the RCA. Within the context of efficient administration and being responsive to the rule of law within the ambit of the judgement, it is NERSA consideration that the symbiotic directive of the court will be satisfied.
- 3.9 The supplementary application must be considered in line with the dictates of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000) ('PAJA') read with section 10 of the NERA. The relevant sections of the two acts address the procedural requirements when exercising the regulatory mandate under which a decision must be made. This Consultation Paper is the first phase of the stakeholder engagement process, which may lead to the second phase of consultation, namely public hearings.
- 3.10 This Consultation Paper recognises that the supplementary application will be treated as an RCA in its totality, without any addition to what has been received from Eskom. The Energy Regulator is barred from assuming the

existence of variances on what was approved during the MYPD and the RCA decisions. Once Eskom's application has been received by NERSA, NERSA does not have discretion not to consider the application and make a decision on the application, otherwise the provision of PAJA will set in and consider that NERSA has refused to take the decision.

- 3.11 The supplementary application exists as an ex post facto adjustment to the approved revenues under the one-year revenue application and RCA decisions. Like the RCA that has been considered, the application is premised on the audited financial statements of Eskom, which will show the correct cost incurred during the period within which the one-year revenue determination was implemented.

4 COAL COSTS

Principle in the Court judgement

4.1 In terms of section 79 of the court judgement, It is evident that NERSA did not use the formula specified in the MYPD. The MYPD states that the cost of coal shall be escalated using the formula in the contract. NERSA based the amount allowed for coal for 2018/2019 on the prices it approved in the 2013/2014 RCA decision and says it then escalated them by an industry composite index.

Requirements of MYPD Methodology

4.2 The R/ton coal price and R/ton/km transport cost (rail and road) shall be escalated using the formula in the contracts.

Supplementary application

4.3 Table 2 below illustrates the shortfall in the revenue related to expended efficient and prudent costs in addition to the revenue decision being the RCA application amount. A significant portion was recovered in the RCA determination made by NERSA. The difference is being included in this supplementary application.

Table 2: Supplementary application coal costs

Expended costs in addition to revenue decision (RCA application)	Recovered in RCA	Supplementary Application
R12 416m	R10 861m	R1 555m

NERSA's analysis

4.4 The R1.5billion applied for in the supplementary application is equal to the disallowed amount in the FY19 RCA application. NERSA welcomed the judgement and will abide by it. However, NERSA remains concerned about corruption issues relating to coal contracts and will factor relevant conclusions of the investigations regarding coal contracts into future Eskom revenue decisions, after investigations undertaken by various bodies have been concluded and the expenses have been quantified. These investigations include investigations conducted by NERSA.

Stakeholder Question 1:

- a) How should NERSA deal with coal costs?

5 INDEPENDENT POWER PRODUCER COSTS**Principle in the Court judgement**

5.1 According to section 46 of the court judgement, NERSA disallowed all costs in respect of Network Use-of-System charges by Independent Power Producers (IPPs). It appears it made this decision on the basis that it believed that Eskom recovered such costs, whereas such costs were not recoverable and would ordinarily form part of the costs Eskom was entitled to recover through its tariffs.

Requirements of MYPD methodology

5.2 Use-of-system charges incurred by the buyer in line with the Power Purchase Agreement (PPA) from IPPs will be allowed as a full pass-through cost.

Supplementary application

5.3 To the extent that any other expended amounts are not addressed by NERSA in the RCA determination, they would be included in this supplementary tariff application. This is with the proviso that the requirements meet the conditions of the NERSA revenue decision being made lawfully.

Table 3: Supplementary application on Use-of-system charges

Expended use of system costs	Recovered in RCA	Supplementary Application
R101m	0	R101m

5.4 In its RCA application, Eskom had applied for R101m efficient and prudent variance in its IPP costs related to the 'use of system' expended costs. Eskom indicated that NERSA did not allow for this efficient and prudence variance to be recovered in the RCA determination.

NERSA analysis

5.5 The invoices submitted indicated that Eskom continued charging Use-of-System (UoS) charges to IPPs, despite the fact that in the approved 2018/19 decision, NERSA disallowed UoS charges of R192m for reasons well-articulated in the decision. In the RCA application, Eskom included R101m for UoS charges in the renewable energy cost of R22 364m.

- 5.6 The RCA is there to reconcile only those cost items that would have been allowed in the MYPD. The UoS charges were disallowed in the MYPD and can therefore not be considered in the RCA. A total of R101m was therefore disallowed.
- 5.7 In disallowing the UoS charges charged to Renewable Energy Independent Power Producers (REIPPs) during the MYPD application, NERSA had considered that those cost items had already been provided for in the MYPD application under the Transmission and Distribution section. An example is the provision for network strengthening and expansion investment to connect new generators and loads to the grid, as well as the creation of new and expansion of existing power corridors.
- 5.8 NERSA had approved R7.7billion for this cost item, and Eskom used only R2.3billion (page 111 of Eskom's RCA application). Eskom also underspent on the distribution network by R1,8billion (Table 59 of the RCA application). In both cases, Eskom highlighted that it decided to reprioritise its maintenance activities. The trend of Eskom's underspending on the transmission and distribution network had been noted by NERSA during the MYPD application (paragraph 84.12 of the 2018/19 MYPD RfD). Eskom's claims that it cannot keep on maintaining and expanding its transmission network without UoS charges from IPPs is therefore incorrect. NERSA had already provided for this cost, but Eskom intentionally re-allocated the funds and still underspent on the transmission and distribution network.
- 5.9 Eskom's reason for charging UoS charges is based on three documents: the Grid Code, the MYPD Methodology and the PPA. These are the same reasons that it gave in justifying the UoS charges in the 2018/19 application, which NERSA considered and disallowed.
- 5.10 Eskom argues that the Section 4.2.1 of the Distribution Code says:

General Tariff Principles

(1) The Distributor shall make capacity available on its networks and provide open non-discriminatory access for the use of this capacity to all South African Customers (loads), and Embedded Generators. In exchange for this service, the Distributor is entitled to a fair compensation through electricity tariffs.

- 5.11 Eskom's reasoning is flawed in that the quoted section deals with General Tariff Principles, which cannot be applied to the REIPP Procurement Programme, as it is a specific programme that was initiated by the Government and backed by the National Treasury. This section also deals with IPPs connected to the Distribution network only, yet UoS charges are

also charged to IPPs that are also connected to the Transmission network. The Government took a conscious decision to make Eskom the buyer of the Renewable Energy, although the Renewable Energy cost is higher than that of Eskom's generation. In this decision, the Government considered that Eskom already has the transmission and distribution network, which is already funded by the consumers.

5.12 Eskom would like to compare the REIPPs with bilateral IPPs, which is wrong. A bilateral IPP wheels energy to its consumer through the Eskom network. Both the generator and consumer would not have contributed to the construction and the maintenance of the network, which is why the generator is charged UoS charges. For Eskom customers, the capital cost of the Transmission network and the maintenance thereof is included and provided for in the approved MYPD application. This cost, once approved, is paid by the customers through tariffs. Charging UoS to the REIPP, who will charge it back to Eskom, and Eskom claiming it from the customers, is effectively making consumers pay twice for the same network. Eskom may state that the customers are not paying twice because the allowed UoS is split between generators and customers in the first place.

5.13 Eskom also argues that section 8.4 of the PPA has provision for UoS charges as stated below:

*8.4 The Buyer shall reimburse to the Seller the Use of System Charges, **if any**, which the Seller is obliged to pay and has paid in terms of the Distribution Agreement or the Transmission Agreement, as the case may be in each Billing Period. If any Use of System Charges are repaid to the Seller as a result of a dispute in terms of either the Distribution Agreement or the Transmission Agreement, then the Seller shall be obliged to repay the Buyer to the extent such amounts have already been reimbursed to the Seller in terms of this clause 8.4 (Use of System Charges), and the Buyer shall be entitled to deduct such amounts in the next Invoice issued to the Seller.*

5.14 In the above clause, the ***if any*** was deliberately included because there are cases where UoS charges are not applicable. The clause was included in anticipation of an unbundled Eskom, where there is an Independent Transmission Operator, who would fund the Transmission network from UoS charges to all generators, including Eskom's own generators. It also covers scenarios where the IPPs are wheeling energy to Eskom through third-party networks, such as a municipal network. In this case, the Municipality would raise UoS charges to the IPP, and the IPP would be entitled to recover the cost from Eskom as the buyer. Eskom would then recover that cost from Eskom consumers.

- 5.15 Currently, Eskom is the owner of the power generated by the REIPPs, but is also the owner of the network. It can therefore not charge UoS charges to itself.
- 5.16 According to Eskom, the third basis for charging UoS charges is that the MYPD Methodology allows it. Section 13.4 of the Methodology states that:
13.4 Use-of-system charges incurred by the buyer in line with the PPA from IPPs will be allowed as a full pass-through cost.
- 5.17 NERSA agrees with the Methodology and would like to reiterate that the UoS charges allowed as pass-through cost are those allowed in the PPA. The issue here is the interpretation of Clause 8.4 of the PPA quoted above. Eskom should also remember that the MYPD is about recovering costs. Charging costs because is allowed in the PPA and by the Methodology is not acceptable. Eskom must allocate a cost to a specific function/expense and ensure that there is no double counting of costs, as required by section 13.11 of the Methodology. Once the full Transmission and Distribution cost is allowed in the MYPD application under the Transmission and Distribution network paid by the customers, Eskom cannot charge REIPPs UoS charges to cover a portion of the Transmission or Distribution cost, and claim that cost from customers again.
- 5.18 Even if NERSA assumes that Eskom takes the transmission and distribution cost allowed under the MYPD and try to recover it from generators and consumers, it would be an inefficient way of recovering this cost, because the cost charged to REIPPs would only be recovered at least one year later, during the RCA application. The fact that the RCA may also be liquidated well after the RCA determination worsens the situation. It is best to recover all transmission and distribution charges from consumers' tariffs on a monthly basis. This is why NERSA allowed all transmission and distribution cost to be recovered from customers during the 2018/19 MYPD period, instead of recovering only part of the transmission and distribution cost from customers in the 2018/19 period and another portion from customers through the RCA. With the current Eskom structure, the IPPs remain revenue neutral in one billing cycle as they pay Eskom, and Eskom pays it back to the IPPs. If anything, it is just an administrative burden on Eskom.
- 5.19 The total disallowed REIPP costs is therefore R129.5m, consisting of R5.8 for Amakhala deemed energy payments, R22.7m for deemed energy payments due to curtailment events for Kouga and Jeffreys Bay and R101m for UoS as stated above.

Stakeholder Question 2:

a) How should NERSA deal with the UoS ?

6 OPERATING COSTS**Principle in the Court judgement**

6.1 Section 84 of the judgement states that while it must be contemplated that the exercise of reasonable judgment would have required a careful reconsideration of the amount Eskom advanced for employee costs, the method used by NERSA falls considerably short of such reasonable judgment.

Requirements of the MYPD4 methodology

6.2 Allowable expenses relate to all expenses that are incurred in the production and supply of electricity. These costs include normal operating expenditures, maintenance (excluding refurbishment costs that must be capitalised), manpower or labour costs, and overheads (centrally administrative and general expenses allocated) that are normally recovered within one financial year.

6.3 Manpower costs should be allowed in accordance with the allowable revenue; any additional expenses over and above what was allowed will be at Eskom's expense, excluding inflationary charges.

6.4 Allowance for the human resources costs should be at reasonable levels. The Energy Regulator may require access to wage settlement documents to verify the reasonability of these costs.

6.5 Expenses must be prudently and efficiently incurred and must be at arm's length transactions.

6.6 Expenses must be incurred in the normal operations and supply of electricity, including an acceptable level of repairs and maintenance costs.

6.7 Expenses forecast will be based on the most recent prudently and efficiently incurred actual costs, taking into account the fixed and variable nature of such costs.

Supplementary application

6.8 Eskom's RCA application for operating costs reflects the expended costs that were not included in the revenue decision. Portions of these expended costs were recovered in the RCA determination. The remainder is included in this supplementary application, as shown in **Table 4** below.

Table 4: Supplementary application operating costs

Expended costs in addition to revenue decision (RCA Application)	Recovered in RCA	Supplementary Application
R3 318m	R893m	R2 425m

NERSA analysis

6.9 Stakeholder in its paper requested the judge to rule on operational costs (including employee costs, and maintenance and other costs). Emphasis was placed on employees benefit costs, as stated in section 43 of the order, which read as follows: *"in its decision NERSA disallowed some R 3.785 billion in employee costs. It did so by using 2007/8 as a base year and calculated the ratio of staff to electricity output in 2007/2008 as 7.26 GWh per employee and using the 2018/2019 projection, it concluded that it translated into 5.3 GWh per employee. On this basis it then concluded that Eskom was overstaffed by 6232 employees and using inflation, adjusted the average rate of R0.608m per employee and came to a figure of R 3.785 billion which it disallowed from Eskom's allowable revenue"*.

Stakeholder Question 3:

a) How should the Energy Regulator treat the operating costs?

7 INTEGRATED DEMAND MANAGEMENT

Principle in the Court judgement

7.1 Section 86 of the court judgement stated that the total disallowance of this item appears to lack justification, given that Eskom is obliged to formulate energy efficiency and demand reduction programmes. It was disallowed because NERSA is of the view that Eskom has excess capacity, which exacerbates the problem. Firstly, such programmes are not dependent on the existence of capacity, but are meant to advance energy efficiency. Secondly, Eskom did not have excess capacity at the time, which undermines the very basis for the disallowance of these costs.

Requirements of the MYPD Methodology

- 7.2 The MYPD4 Methodology requires Eskom to undertake IDM initiatives, specifically energy efficiency and demand side management (EEDSM) initiatives. This is independent of the level of capacity available.
- 7.3 Eskom must develop and submit a five-year demand resource potential assessment, including technical potential and estimated achievable potential. The five-year plan should be updated annually.

Supplementary tariff application

- 7.4 In response to the revenue decision and severely constrained financial situation, Eskom had to significantly curtail the continuation of any EEDSM programmes. It is evident from the actual expended amounts for this revenue item that Eskom was not able to expend as was required by the MYPD Methodology. Eskom will thus not be in a position to include what was originally required in terms of the MYPD Methodology in this supplementary tariff application and will limit the amount to what was actually expended.
- 7.5 Had the revenue decision been made lawfully, NERSA would have made a reasonable decision for allowing revenue related to EEDSM costs. Thus, the R6m expended cost is included in this supplementary application.

NERSA analysis

- 7.6 The IDM interventions used by Eskom are Industrial Load Shifting and Residential CFL (Compact Fluorescent Lamp) Rollout projects; National advisory services to guide customers in terms of best energy use practices; and IDM solutions development to assist the businesses to develop solutions and mechanisms to support energy and demand management. Although the NERSA determination for the EEDSM programme was zero for FY2018/19, Eskom continued with the implementation of EEDSM projects to support the system constraints in FY 2018/19.

Stakeholder Question 4:

- a) How should the Energy Regulator deal with the IDM costs?

8 RECOVERY OF CARRYING COSTS

Principle in the Court judgement

- 8.1 There is no order in the judgement that deal with the recovery of interests assuming the delay.

Requirements of the MYPD Methodology

- 8.2 There are clauses in the methodology that deals with this line item.

Supplementary tariff application

- 8.3 Eskom is applying for an amount of R 1 353billion carrying costs (assuming delay of three years) (with recovery in FY 2021/22) at 10% interest per year, compounded annually.

- 8.4 In its application, Eskom acknowledged that additional revenue for the recovery of prudent and efficient costs, as determined by NERSA in the RCA determination, does not cater for carrying costs in the form of time value of money. However, with regard to the High Court Judgement that accommodates the additional revenue to which Eskom would have been entitled to recover expended costs, had the decision been made lawfully, the carrying costs will need to be included. Thus, once such additional revenue has been determined, the carrying costs will be included. Only the interest cost, at a rate of 10% per annum compounded annually, is considered. The effect of inflation is not included.

NERSA analysis

- 8.5 The court order does not include recovery of carrying costs, nor does the methodology make provision for this cost to be recovered from customers. Eskom is entitled to recover expended costs on specific line items as depicted in the court order.

Stakeholder Question 5:

- a) How should the Energy Regulator treat the carrying costs as applied for by Eskom?

9 THE CONSULTATION PROCESS

9.1 Stakeholders are requested to comment in writing on the Consultation Paper for the supplementary application. Written comments can be forwarded to mydpd@nersa.org.za; hand-delivered to Kulawula House, 526 Madiba Street, Arcadia, Pretoria, or posted to PO Box 40343, Arcadia, 0083, Pretoria, South Africa. The closing date for the submission of comments is **30 October 2020 at 16:00**.

9.2 NERSA will collate all comments received, which will be taken into consideration when the decision is made. Public hearings will be held using MS Teams in line with the COVID-19 restrictions and applicable government regulations; wherein presentations may be made by interested and affected parties.

9.3 The process for consultation and decision-making is outlined in the table below.

Table 5: Indicative Timelines

DRAFT HIGH-LEVEL TIMELINES FOR APPROVAL OF THE SUPPLEMENATRY APPLICATION RCAs	
ACTIVITY/TASK	DATE
Electricity Subcommittee (ELS) to recommend publication of the applications and indicative timelines to the Energy Regulator (ER)	23 September 2020
The Energy Regulator approves publication of the consultation paper together with the Supplementary applications	29 September 2020
Publication of the consultation paper and the Supplementary applications to solicit written stakeholder comments	30 September 2020
Closing date for stakeholder comments on the Supplementary applications	30 October 2020
Microsoft Teams Public Hearings ¹	23 November – 2 December 2020

¹ Details provided on Table 2 below

Analysis of stakeholders comments and drafting the Reasons for Decision (RfD) for ELS consideration	03 December 2020 - 18 December 2020
Extended ELS workshop (interrogation of the analysis done on the applications and stakeholder comments) Draft Decision and Reasons for Decision	13 January 2021
Special ELS to recommend the Draft Decision and Reasons for Decision	20 January 2021
Requesting licensee to provide comments on the ELS recommendation before ER approval	21 January 2021
Energy Regulator decision on Supplimentary applications	27 January 2021
Submission of the RfD to Eskom for treatment of confidentiality (Eskom given 7 days to indicate matters deemed confidential)	29 January 2021
NERSA analysis of matters deemed confidential by Eskom	5 February 2021
Regulator Executive Committee (REC) deals with the treatment of matters deemed confidential by Eskom	15 February 2021
Publish NERSA decision and reasons for decision	26 February 2021

9.4 Table 6 below shows the indicative timelines that will be published on NERSA website.

Table 6: Public Hearing indicative dates and venues

PROVINCE	CITY	DATE
Western Cape	Virtual meeting	16 November 2020
Eastern Cape	Virtual meeting	17 November 2020
Kwa-Zulu Natal	Virtual meeting	18 November 2020
North West	Virtual meeting	23 November 2020
Northern Cape	Virtual meeting	25 November 2020
Free State	Virtual meeting	26 November 2020
Mpumalanga	Virtual meeting	27 November 2020
Limpopo	Virtual meeting	30 November 2020
Gauteng	Midrand (physical public hearing) and Virtual meeting	1-2 December 2020

*The dates of the public hearings might be extended/reviewed depending on the number of presenters registered.

9.5 Due to Covid19 restrictions, public hearings will be conducted virtually. Provision will be made for one physical public hearing in Gauteng as the risk will be less in that there will not be any travelling/usage of airports and hotels. NERSA will continue to observe developments in the COVID19 regulations and make amendments where necessary.

9.6 For more information and queries on the above, please contact Mr Thilivhali Nthakheni or Mr Samson Modise at the National Energy Regulator of South Africa, Kulawula House, 526 Madiba Street, Arcadia, Pretoria.
Tel: 012 401 4025/4060
Fax: 012 401 4700

End.