

ELECTRICITY PRICES/Anton Eberhard

Dangers in cutting Nersa's power

JUST as the National Energy Regulator of SA (Nersa) begins to show its teeth by holding the electricity industry to account, a bill has been tabled in Parliament that seeks to drastically limit its powers.

The Electricity Regulation Amendment Bill, if enacted, will strip the power of Nersa to set and/or approve electricity prices for the vast majority of electricity consumers in SA. Instead, government will hand this power to municipalities acting under national norms and standards prescribed by the minerals and energy minister.

The bill marks a radical departure from the current regulatory regime. Over the past 10 years, Nersa has had the legal power to approve the tariffs of Eskom and all municipalities. This makes economic sense, as electricity networks are natural monopolies. The regulator protects consumers, and ensures the financial viability of the industry, through setting and approving tariffs and service quality.

The bill states that a municipality must exercise its executive authority and perform its duty to administer the reticulation of electricity by, among other actions, setting and structuring tariffs. Municipalities will also be able to exercise authority over other service providers, such as Eskom, operating in their areas of jurisdiction.

This approach is deficient in at least four respects. First, the bill severely constrains the proposed restructuring of the electricity distribution industry by entrenching the powers of municipalities. Electricity distribution failures are primarily a result of insufficient investment by municipalities in maintenance, system strengthening and skilled professionals and managers. The root cause of this underinvestment is poor municipal governance.

The early experiences of City Power in Johannesburg and RED1 in Cape Town demonstrate that the current "municipal entity" model creates serious impediments to the effective corporatisation, management and operation of electricity distribution.

Local governments all too often raid electricity budgets for other purposes and interfere too readily in tariff and operational issues — when they should rather be providing higher-level shareholder oversight, as is common in corporations that are subject to public-entity law.

It should also be possible to force failing municipalities to transfer electricity distribution to more competent providers.

This amendment bill does the opposite. It entrenches the powers of municipalities, rules out alternative models, takes millions of customers away from Eskom, and makes mandatory restructuring impossible.

Second, there is a fundamental misunderstanding in the bill of how economic regulation works.

National norms and standards may be appropriate in technical areas such as maintaining voltage or frequency levels. They may even be used to define which types of tariffs may be employed. But they are useless for establishing actual tariff levels for customers supplied by specific utilities.

Economic regulation requires an understanding of operational costs, the asset base, investment plans, the cost of capital and revenue requirements of individual utilities, and involves setting realistic and effective incentives for efficiency improvements. National norms and standards can only be applied in a general sense and are a weak and ineffective instrument for driving costs down and protecting residential, commercial and industrial consumers.

Nersa should retain the right to undertake effective economic regulation of individual distributors by setting and approving their tariffs. This is not a trivial matter: it affects the welfare of millions of consumers and ultimately, also, economic growth prospects.

Third, it makes no sense to duplicate the functions of the regulator by granting numerous additional regulatory functions to more than 150 municipalities and the minister. Nersa has built professional capacity which constitutes a valuable national

resource. Increased involvement by municipalities and by the minister also confuses regulatory roles and responsibilities and compromises the independence of the regulator.

Fourth, the bill makes a rather arbitrary distinction between those customers that will be regulated by municipalities — those using less than 5 000MWh a year — and the remainder who will be regulated directly by Nersa. This is entirely impractical. The same electricity networks frequently service both classes of customers. If different regulators are making different decisions around tariffs for customers served by a contiguous and integrated network, complex challenges will arise around ensuring that the costs of operations, and of existing and new investments, are adequately covered.

These proposed changes fly in the face of international trends and best practice. Most modern economies now have national or state electricity regulators who have jurisdiction over the entire electricity network.

What is to be done? First, the proposed amendments should be withdrawn. The existing Electricity Regulation Act gives Nersa the power to regulate the entire electricity network, including Eskom and municipalities. And section 155 (7) of the constitution states that "National government ... has the legislative and executive authority to see to the effective performance by municipalities of their functions (for example electricity reticulation) ... by regulating the exercise by municipalities of their executive authority".

Second, legislation should be introduced that maps out a clear restructuring path that recognises the rights of effective municipal electricity distributors to continue — but provides for the transfer of failing electricity distributors to a national electricity distributor, led by Eskom.

Those that continue to assert the inalienable constitutional right of municipalities to undertake electricity reticulation surely do not argue that this includes an ongoing right to operate a failing service!

Third, the governance arrange-

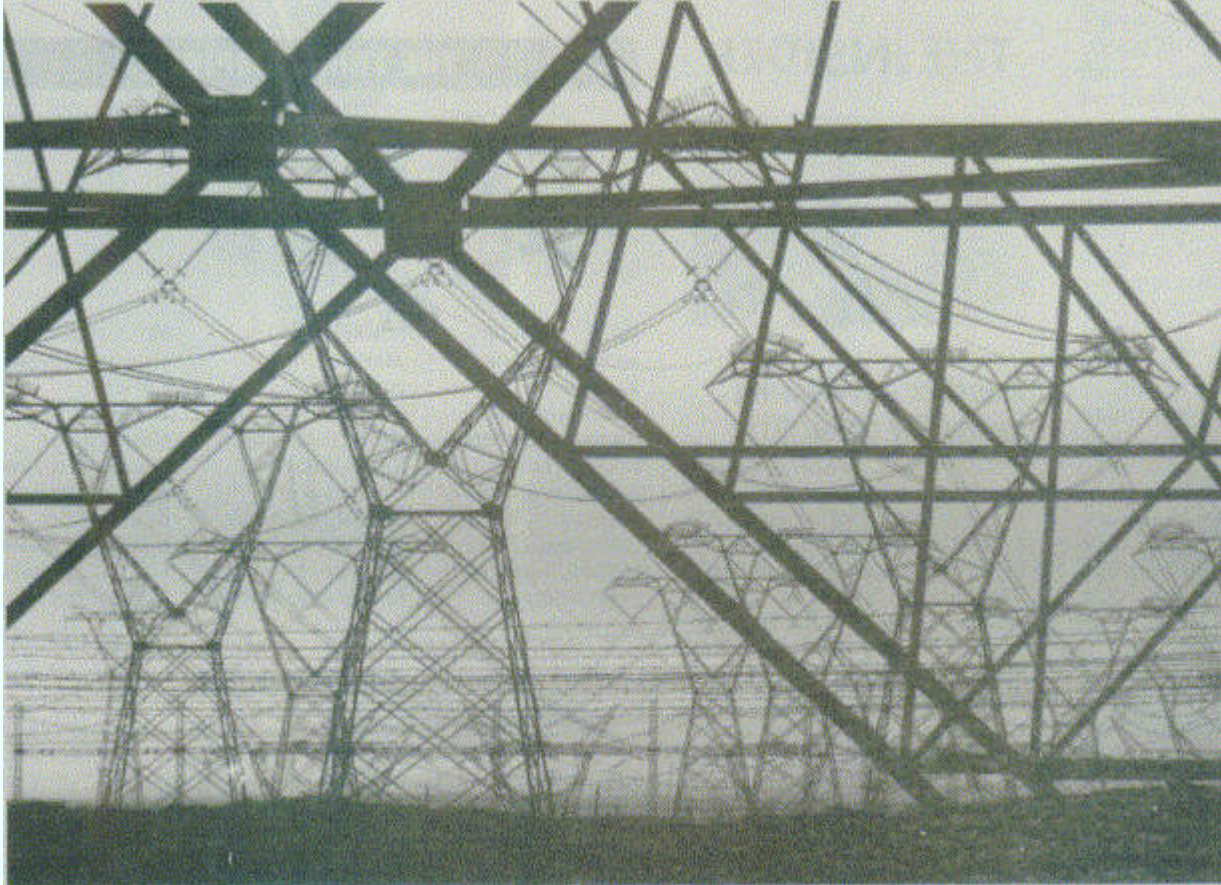


ments of the metro and large city electricity distributors — 12 account for 80% of municipal electricity distribution — need to be improved by requiring them to effectively ring-fence and corporatise their electricity businesses, and by making them exempt from restrictive provisions in the Municipal Finance Management Act and Municipal Systems Act.

The electricity system in SA comprises a nationally integrated system with a contiguous value chain that flows from generation through transmission and distribution or reticulation. Effective regulation requires a professional national regulator which is able to squeeze efficiencies along the entire value chain and ensure that these are passed on to consumers.

Let's hope interested and affected stakeholders will make their voices heard in the parliamentary hearings on this bill — scheduled for October 9 and 10 — to ensure it is withdrawn.

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