

1. INTRODUCTION

The roles and responsibilities of the newly configured municipalities are governed by a suite of legislation comprising the Local Government: Municipal Structures Act (Act 117 of 1998, and its amendment in 2000), the Local Government: Municipal Systems Act (Act 32 of 2000) and a host of service specific legislation.

In terms of Section 74 of the Municipal Systems Act, each local authority must adopt and implement a tariff policy that is consistent with the provisions of the Act. In addition tariffs for water services must also comply with regulations prescribed in terms of Section 10 of the Water Services Act (Act 108 of 1997) and tariffs for electricity must comply with the provisions of the Electricity Act (Act 41 of 1987).

Further, the financial viability and sustainability of the newly created municipalities will be highly dependent upon the income generated from property taxes and from the tariffs for trading services. Moreover, the actual income collected will be influenced by consumer affordability and perception with respect to the fairness of these tariffs.

Hence there are both legislative and other imperatives for municipalities to develop and adopt appropriate tariff policies and structures based on sound principles. This will not only be a fulfilment of the legislative responsibility of municipalities but will also minimise the risk of legal challenges and assist in the realisation of the required revenue.

The tariff policy has been workshopped with Councillors and officials of the Municipality and incorporates the comments and input from this forum.

2. OBJECTIVES

The objectives of a tariff policy are as follows:

- (a) To comply with the legislative requirements;
- (b) To gain an understanding of tariff issues;
- (c) To establish sound principles for the development of tariff structures;

The policy is intended to guide the structure of all tariffs. Hence this document does not make specific tariff proposals, nor does it deal in any detail with the implementation of specific tariff proposals.

3. STATUS QUO

The newly established Nelson Mandela Metropolitan Municipality comprises the amalgamation of four previous municipalities, each with their own existing tariff policies and structures. Under the current differentiated structures, consumers are currently paying different amounts for what can be perceived to be the same service. This could be considered to be unfair discrimination in terms of the Municipal Systems Act and could lead to consumer resistance to pay for services and to legal challenge. There is, therefore, a need to develop a tariff policy that is consistent with the Municipal Systems Act.

Although it is permissible in terms of the Municipal Systems Act to differentiate tariffs according to geographic area, such a differentiation needs to have a sound rationale. At present it is unlikely that the existing tariffs are differentiated between the previous municipal areas on a sound and consistent basis. It is desirable for the tariffs to be rationalised across the whole metropolitan area, aiming for uniform tariffs for the whole area for specific customer classes unless there are strong grounds for a geographic differentiation of tariffs for selected services.

There are currently a number of other processes underway that are interrelated to each other and will need to be aligned to this tariff policy. These are:

Revenue Management: This policy is currently in draft form and deals with credit control, customer interface and indigency (assistance to the poor). Incentives for local economic and social development should not be included.

Service Alignment: Service policies, standards and practices across the metro need to be aligned as part of the process of organisation, transformation and amalgamation. This should include rationalisation of service delivery areas and re-engineering. These need to be reflected in the relevant service plans such as the Integrated Solid Waste Management Plan and Water Services Development Plan which should reflect the service delivery and institutional capacity restructuring priorities of the Integrated Development Plan (IDP).

Service Level Alignment: Although political intent with regard to minimum service levels exist, service delivery strategies to implement these services do not yet appear to be in place. These strategies and related projects should be developed as part of the IDP.

4. LEGISLATIVE FRAMEWORK

Current Legislation

Current legislation encompasses government policy as outlined in white papers, legislation in the form of acts and regulations and intended legislation in the form of bills and draft regulations. The Local Government: Municipal Systems Act 32 of 2000, the Water Services Act 108 of 1997 (WSA) and the Electricity Act 41 of 1987 are the key legislation that informs the development of tariff policies, yet there are many others that impact on it. The proposed tariff policy complies with the legislation listed in Table 1.

Legislation	Section	Service
Constitution of the Republic of South Africa, 1996	229(1)a 229(2)	Municipal Services
Local Government: Municipal Systems Act 32 of 2000	74, 75,94(1)(c)	Municipal Services
Local Government Transition Act 209 of 1993 (LGTA)	10G(7)(a)(ii)	Municipal Services
Water Services Act 108 of 1997 (WSA)	10	Water and Sanitation
Regulation R652 "Norms & standards in respect of tariffs for water services"		Water and Sanitation
Water Supply and Sanitation White Paper of 1994		Water And Sanitation
National Water Policarey White Paper of 1997		Water
Environment Conservation Act 73 of 1989 (ECA)		Solid Waste
National Electricity Regulator guidelines on electricity pricing in South Africa 1995		Electricity
National White Paper on Energy Policy 1998		Electricity
Electricity Act 41 of 1987		Electricity
National Environmental Management Act 107 of 1998 (NEMA)		Solid Waste
National Waste Management Strategy (Version D October 1999)-(NWMS)		Solid Waste
Local Government: Property Rates Bill (Government Gazette No 21448 August 2000)		Sanitation and Solid Waste

Table 1: Legislation impacting on Tariff policy.

In terms of the Municipal Systems Act, local government must give priority to meeting the basic needs of the local community, promote development of the local community and ensure universal access to at least the minimum level of basic municipal services. Furthermore, local government must adopt and implement a tariff policy that complies with the Act. The Act sets out principles that the tariff policy must reflect.

The National White Paper on Energy Policy of 1998 sets out Government's policy regarding its approach to electricity pricing that includes cost-based tariffs with moderately subsidised tariffs for poor domestic consumers. In terms of Section 9 of the Electricity Act, this approach is implemented by the National Electricity Regulator, which has broadly defined the construction of tariffs for the South African Electricity Distribution in the NER electricity pricing guidelines of 1995. 21

The Water Services Act provides for the regulation of water services tariffs. The regulation 652 of 20 July 2001, Norms and Standards in respect of tariffs for Water Services in terms of Section 10(1) of the Water Services Act (Act No. 108 of 1997) also provide principles to which a tariff policy must be aligned.

Two White Papers - the Water Supply and Sanitation White Paper of 1994 and the National Water Policy White Paper of 1997 - set out National Government's broad policy intentions with respect to the water services sector in South Africa. The key elements of these white papers, as they pertain to urban water pricing, are access to basic services, affordability of poor households and full cost recovery.

Equity Considerations

A municipality in promulgating rates or tariffs is acting as a legislature and is subject to the requirements of legality and equality. A number of judicial decisions have considered the impact of equality rights (under the Constitution) in the context of tariff and rates policies and the requirements of legality.

In addition to the equity rights under the Constitution, equity rights are granted under the Municipal Systems Act. In providing municipal services, municipalities are subject to a range of duties set out in section 73 of the Municipal Systems Act including equity and financial sustainability. It is clear from the duties, when examined together, that some balancing of the principles underlying the duties is required. Furthermore, section 73 seems to postulate different service levels and standards of service that improve over time. Accordingly, provided that a basic service is provided and is made a priority, the requirement of equity under the Municipal Systems Act is weaker than the requirement of equality under the Constitution, and the risks arising from the Municipal Systems Act can be managed.

The risk of legal challenge in terms of equity under the Municipal Systems Act is due to current differentiated tariff structures. This risk can be reduced by first addressing the provision and prioritization of basic services as part of the tariff alignment process. The enactment of Tariff Policy By-Laws under section 75 of the Municipal Systems Act will further reduce the risks arising from equity challenges.

Public and Private Goods

The notion of public and private goods provides a theoretical basis for determining whether to pay for services through rates or taxes. Private goods are characterised by being of benefit primarily to the individual consumer. In contrast public goods benefit communities as a whole, rather than individuals. Most services have both public and private good characteristics, but the relative importance of the public and private nature differs between goods. For example, roads and basic water supply and sanitation have important public good characteristics that benefit the community, whereas luxury domestic water use (swimming pools) is essentially a private good benefiting the individual household only.

There are essentially three factors that can categorise a service as a public good. The first is if the consumption of the service can result in 'externalities'. Sanitation and refuse services are provided to individual households, yet the benefits accrue more widely. If refuse and sanitation services cease to be provided to a household this creates health and other risks (externalities) which impact negatively on the broader community.

The second factor is non-excludability i.e. people who do not pay cannot be excluded from benefiting (normally resulting in market failure). Street lighting is a good example as once it exists individuals cannot be prevented from benefiting from it even if they are unwilling to pay for it (the free-rider problem). ²³

The third characteristic that may lead to a service being categorized as a 'public good' is what is termed 'non-rivalness'. This is where the benefit derived by one individual does not hinder the benefit to another. One person's benefit from street lighting for example, does not prevent somebody else from benefiting from it. Thus the market cannot function as an efficient allocator of such resources, and often the public sector will get involved in the provision of such goods.

In principle, private goods are provided to individuals and should be charged based on consumption. In this case consumption-based tariff funding is appropriate. Water and electricity, which display high degrees of private good, are examples where consumption is metered and charged through tariffs.

However this cannot happen with public goods. Individual consumers cannot vary the amount of public goods they consume and are charged by means of taxation by the public authority (rates in the case of local government).

Sanitation and solid waste are examples of services that display a high degree of public good. In these cases the degree of public good is related to the level of service. It is in the public good that everyone has access to a toilet, but it is not in the public good if an individual has 5 toilets. These are known as mixed goods and can be funded through a combination of rates and consumption based tariffs (if appropriate).

The proposed Tariff Policy is attached as Annexure "A".

RECOMMENDATION

- (a) That the Tariff Policy, attached as Annexure "A" be adopted.
- (b) That Tariff Policy By-Laws be developed in compliance with Section 75 of the Municipal Systems Act and submitted for adoption.

NELSON MANDELA METROPOLITAN MUNICIPALITY

TARIFF POLICY

1. DEFINITIONS

- "Municipal service" a service provided by the Nelson Mandela Metropolitan Municipality or its agent.
- "Municipal tariff" a tariff, fee or charge for a municipal service or other activity, intended to recover the cost of delivery of the service or part thereof.
- "Basic service" a service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment as described in a service delivery plan.
- "Charge" includes a fee, price or tariff for a unit of service consumed, used or deemed to have been used by a person.
- "Community" in relation to a municipality, includes any stakeholder, non-governmental, private sector or labour organisation or body which is –
- (a) involved in local affairs within a municipality; or
 - (b) concerned with the protection or promotion of any specific interest in the municipality.
- "Consumer" any end user, which the Municipality has agreed by formal contract to supply a service or is actually supplying a service, including an end user in an informal settlement, or where a consumer has tacitly consumed services without a formal contract.
- "Environmentally sustainable" in relation to the provision of a municipal service, means the provision of a municipal service in a manner aimed at ensuring that –
- (a) The risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
 - (b) the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and
 - (c) legislation intended to protect the environment and human health and safety is complied with.
- "Financially sustainable" in relation to the provision of a municipal service, means the provision of a municipal service in a manner –
- (a) aimed at ensuring that the financing of that service from internal and external sources including budgeted income grants and subsidies for the service, are sufficient to cover the cost of –

- (i) the initial capital expenditure required for the service;
- (ii) operating the service; and
- (iii) maintaining, repairing, and replacing the physical assets used in the provision of the service.

"Person" includes a natural person, a juristic person, an unincorporated body, an association and an organ of state.

"Resident" in relation to a municipality, means a person who is ordinarily resident in the municipality.

"Unit of Service" the appropriate portion of a service consumed, used or deemed to have been used by a person that can be metered, measured, estimated or calculated.

2. APPLICATION

This policy shall be applicable to services provided or delivered by the Municipality and shall also be applied by an agent, contractor or other form of municipal service provider acting on behalf of the Municipality in terms of an agreement.

3. PRINCIPLES

- 3.1 Consumers of municipal services should be treated equitably in the application of tariffs.
- 3.2 The amount individual consumers pay for services should generally be in proportion to their use of that service.
- 3.3 Poor consumers must have access to at least basic services through -
 - (i) Tariffs that cover only operating and maintenance costs;
 - (ii) Special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or
 - (iii) Any other direct or indirect method of subsidisation of tariffs for poor households.
- 3.4 Tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges.
- 3.5 Tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned.
- 3.6 Provision may be made in appropriate circumstances for a surcharge on the tariff for a service.
- 3.7 Provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users.
- 3.8 The economical, efficient and effective use of resources, the recycling of waste, and other appropriate environmental objectives must be encouraged.
- 3.9 The extent of subsidisation of tariffs for poor consumers and other categories of users should be fully disclosed.
- 3.10 Tariffs may differentiate between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.

- 3.11 The imposition of tariffs will align with the Revenue Management Policy.
- 3.12 The setting of tariffs will be transparent to ensure that the resulting tariffs are clear and easily understood.
- 3.13 The full and true cost of service provision, including overheads and surcharges determined by the financial ring fencing of services or activity based costing of services will be used as the basis for the setting of tariffs.
- 3.14 The cost recovery mechanism and any subsidisation of tariffs will be fully disclosed.
- 3.15 Homogeneous categories of consumer may be distinguished.
- 3.16 Basic services may be supplied under appropriate circumstances.
- 3.17 Where practical, tariffs will be consumption based and related to a unit of service.
- 3.18 The Municipal Manager will give communities, residents and ratepayers notice by means of appropriate communication media of,
 - (a) intention to alter tariff structures;
 - (b) intention to review tariffs;
 - (c) a new tariff structure;
 - (d) a potential tariff increase;
 - (e) the Council decision on tariffs which have been altered, reviewed, restructured or increased.
- 3.19 Representation by communities, residents and ratepayers on tariffs must be made in writing to the Municipal Manager.
- 3.20 Business Units will give the Municipal Manager notice of their intention to review or alter the structure of a tariff.
- 3.21 The annual review of tariffs reported by Business Units will,
 - (a) show the cost per unit of a service;
 - (b) motivate why full cost is not recovered;
 - (c) motivate non-compliance with the tariff policy;
 - (d) contain a recommendation from the Chief Financial Officer.

4. LONG-TERM OBJECTIVES

The policy should promote the following long-term objectives for the provision of municipal services in Nelson Mandela Metropolitan Municipality. A tariff structure and a tariff setting process must consider these aspects.

4.1 Efficiency

- (a) Ensure that service delivery is efficient by providing market signals that accurately reflect the cost of supply to achieve efficient production and allocation of resources.

4.2 Sustainability

- (a) Financial sustainability, by ensuring that income is sufficient to meet ongoing expenditure needs including overhead costs, maintenance, asset replacement and system expansion to cater for growth.
- (b) Environmental sustainability; promoted by encouraging the wise use of resources, prevention of pollution and adequate investments in waste treatment.
- (c) Affordability of the Municipal area as a whole and the impact on an individual consumer or groups of consumers.

4.3 Equity

- (a) Promote greater equity in service provision and fair treatment of all consumers.

4.4 Transparency

- (a) Promote the access to information regarding tariffs; promote understanding by consumers.