

15 November 2019

Ms Rene Darby
Senior Manager: Key Accounts
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Dear Ms Darby

REFERENCE: KMLM001 NOTICE ISSUED BY ESKOM: INTERRUPTION OF BULK ELECTRICITY SUPPLY TO KAMIESBERG LOCAL MUNICIPALITY

AfriForum is a civil rights organisation with an established branch in Kamieskroon representing our members in the jurisdiction of the Kamiesberg Local Municipality.

INTRODUCTION:

1. Eskom issued a notice to all the parties who are likely to be materially and adversely affected indicating:
 - 1.1. Its intention to interrupt bulk electricity supply to the Kamiesberg Local Municipality commencing on 19 December 2019 and continuing to the week of 26 December 2019;
 - 1.2. That Kamiesberg Local Municipality is indebted to Eskom in the amount of R18 796 821.00 for bulk supply of electricity, part of which has been outstanding and in escalation since March 2014;
 - 1.3. Eskom is under a statutory obligation to supply electricity on a financially sustainable basis;
 - 1.4. That the failure by Kamiesberg Local Municipality to make payment of its electricity account timeously endangers the sustainable provision of electricity to the towns/municipal areas referred to in the notice of termination;
 - 1.5. That Eskom give notice to all parties that will probably be materially negatively influenced by the proposed termination of electricity supply to submit written representations indicating why Eskom must continue or must not continue with the intended termination;
 - 1.6. That the written representations will be considered and a final decision will be published in a notice.

STATUS OF AFRIFORUM:

2. Section 152 of the Constitution provides that the objects of local government are, inter alia, to encourage the involvement of communities and community organisations in the



matters of local government. This object is also expressed as a duty of the Municipality in Section 4(2) of the Municipal Systems Act, 32 of 2000.

3. AfriForum is such a community organisation that is involved in the matters of local government. AfriForum is actively involved in the affected towns and has a branch in the Kamieskroon area. The members of AfriForum are accordingly directly affected by the conduct of Eskom and the Kamiesberg Local Municipality further described below.
4. As such AfriForum has the necessary locus standi to make these representations in its own name and also in the interest of the rate paying residents of Kamieskroon who are facing the imminent threat of their electricity being disconnected in accordance with the notice issued by Eskom.

THE TERMINATION OF ELECTRICITY SUPPLY TO KAMIESKROON MUST NOT BE IMPLEMENTED:

5. In *Joseph and Others v City of Johannesburg and Others* 2010 (4) SA 55 (CC) the Court held in paragraph 47 after consideration of Sections 152 and 153 of the Constitution, Sections 4(2) (f) and 73 of the Municipal Systems Act, and Section 9(1) (a) (iii) of the Housing Act, 107 of 1997, that, taken together, these provisions impose constitutional and statutory obligations on local government to provide basic municipal services, which include electricity. The residents, business owners and public officials in the affected areas are entitled to receive these services. These rights and obligations have their basis in public law. Although, in contrast to water, there is no specific provision in respect of electricity in the Constitution, electricity is an important basic municipal service which local government is ordinarily obliged to provide.
6. In terms of the notice, Eskom is contemplating to disconnect the supply of electricity to Kamieskroon. The effect will be that residents, business owners and public officials in the affected areas who pay their electricity accounts, as well as those who are dependent on free reticulation services, will be deprived of electricity.
7. The rate paying community whose accounts are paid up to date are also entitled to demand access to municipal services in terms of Section 5(1) (g) of the Municipal Systems Act, 32 of 2000.
8. Moreover, each municipality must in terms of Section 27(e) of the Electricity Regulation Act, 4 of 2006, exercise its executive authority and perform its duty by providing basic reticulation services free of charge or at a minimum cost to certain classes of end users within its available resources.
9. It therefore follows that a municipality is not entitled to suspend its electricity service to either the rate paying community who is by law entitled to access to municipal services or to the poor community who is dependent on free services, or in general as it is regarded as a basic municipal service guaranteed by the Constitution.

10. It is therefore contended that Eskom also does not have the right to terminate the electricity supply to Kamieskroon which is under a constitutional and statutory obligation to provide the basic municipal service to its residents and that the conduct of Eskom to indirectly terminate the electricity supply to rate paying consumers and consumers who are entitled to free supply of electricity is unconstitutional.
11. It is further contended that the action to terminate the electricity supply to Kamieskroon by Eskom is a breach of its constitutional obligation to observe and adhere to the principles of co-operative government in terms of Chapter 3 (Sections 40 and 41) of the Constitution as read with the Intergovernmental Relations Framework Act, 13 of 2005.
12. Eskom also has a number of remedies that are less invasive to the rights of electricity consumers in a municipality, i.e., that would not result in the total disconnection of the electricity supply to the towns and municipal areas. Those remedies are:
 - 12.1 Eskom is entitled to approach the National Energy Regulator (the “Regulator”) as a tribunal to decide on the default of the municipality who may give an order to compel compliance by the municipality in terms of Section 18 of the Act by the issuing of a notice of compliance. Should the municipality thereafter fail to comply with the notice of compliance, the Regulator may impose a penalty of 10% of its annual turnover or R2 million per day commencing on receipt of the notice of compliance.
 - 12.2 The Regulator may further resolve any dispute between Eskom and the municipality in terms of Section 30 of the Act.
 - 12.3 Eskom should approach the municipality on an urgent basis to negotiate an agreement in terms of which all electricity payments made by consumers within the municipality’s area of jurisdiction, be paid into a special, ring-fenced account. All funds received in this ring-fenced account will then be paid to Eskom, and only once the arrears have been settled, would the municipality be entitled to access the funds for general purposes.
 - 12.4 Although it is probably a longer-term solution, Eskom should take over the electricity revenue collection at the municipality, as the municipality has failed numerous times in conducting its financial affairs in a sustainable manner and putting the end consumers in its area of jurisdiction at risk.
13. In the circumstances we submit that:
 - 13.1 Eskom does not have the right to terminate the electricity supply to Kamiesberg Local Municipality which is under a constitutional and statutory obligation to provide the basic municipal service to its residents and that the conduct of Eskom to indirectly terminate the electricity supply to rate paying consumers and consumers who are entitled to free supply of electricity, is unconstitutional.

13.2 Eskom ought to follow the remedies provided for in the Electricity Regulation Act, 4 of 2006 that are less invasive to the rights of electricity consumers in the municipality, i.e. that would not result in the total disconnection of the electricity supply to Kamiesberg Local Municipality, namely:

13.2.1 That the Regulator as a tribunal decide on the default of Kamieskroon in terms of Section 18 of the Act; and

13.2.2 That the Regulator resolve any dispute between Eskom and Kamiesberg Local Municipality in terms of Section 30 of the Act.

14. Should Eskom refuse to give such an undertaking and/or proceed to terminate electricity supply to Kamiesberg Local Municipality on 19 December 2019, we will approach the High Court on an urgent basis for interim relief, if necessary on an urgent basis, preventing the termination of electricity supply to the affected municipalities and/or for that matter other local authorities.

Kind regards

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