
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

In the matter regarding

An application for a separate six-year Negotiated Pricing Agreement for Glencore-Merafe Chrome Venture's ferrochrome smelter operations in Rustenburg, North-West

By

ESKOM HOLDINGS SOC LIMITED ('ESKOM')

THE DECISION

Based on the available information, public comments and the analysis performed on Eskom's six-year incentive pricing package application, the National Energy Regulator of South Africa (NERSA), at the meeting held on 28 March 2024, decided the following:

1. That the negotiated pricing agreement (NPA) between Eskom Holdings SOC Limited and Glencore-Merafe Chrome Venture's ('Glencore-Merafe's') ferrochrome smelter operations, in Rustenburg, North-West be approved.
2. The approval of the six-year NPA for the Rustenburg, Glencore Operations South Africa (Pty) Ltd in North-West will be for a power demand of 225 MVA.
3. The NPA will commence on the first day of the month, with at least one full calendar month between NERSA's approval and the implementation date, and terminate 72 calendar months from the commencement date.
4. The minimum base tariff is a unit electricity price of [REDACTED] c/kWh excluding VAT, which is to escalate on 1 April of each year based on the change in the year-on-year February SA Headline Producer Price Index (PPI) + [REDACTED]% for the duration of the agreement.
5. For the duration of the six-year NPA, Glencore-Merafe's ferrochrome smelter operations in Rustenburg will be liable for an upside sharing cost of [REDACTED] c/kWh

excluding VAT (to escalate the same as base tariff) when the contracted threshold ferrochrome price is triggered.

6. The Glencore-Merafe ferrochrome smelter will make available both supplemental and instantaneous demand response to the National System Operator with no compensation.
7. The Glencore-Merafe ferrochrome smelter will be liable for a minimum consumption payment based on ■■■% of normal consumption, measured over a calendar quarter, and adjusted for demand response and substantiated technical events.
8. The Glencore-Merafe ferrochrome smelter must consume, or its forecast annual consumption must be a minimum of 80GWh and/or the load factor must be greater than 70%.
9. Eskom must submit progress reports for the Glencore-Merafe ferrochrome smelter operations in Rustenburg six months after the effective date, and thereafter every six months until the end of the NPA, to enable NERSA to monitor the implementation of the agreements.

End.

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ABBREVIATIONS

CAPEX	Capital Expenditure
COVID	Coronavirus Disease
CPI	Consumer Price Index
DMRE	Department of Mineral Resources and Energy
DPE	Department of Public Enterprises
dtic	Department of Trade, Industry and Competition
EAF	Energy Availability Factor
ERA	Electricity Regulation Act, 2006 (Act No. 4 of 2006)
EPP	Electricity Pricing Policy
Gx	Generation
ILT	Interim Long Term
IPP	Independent Power Producer
NERA	National Energy Regulator Act, 2004 (Act No. 40 of 2004)
NERSA	National Energy Regulator of South Africa
NPA	Negotiated Pricing Agreement
MYPD	Multi-Year Price Determination
MVA	Megavolt Ampere
NSO	National System Operator
OCGT	Open Cycle Gas Turbine
PAJA	Promotion of Administration Justice Act, 2000 (Act No. 3 of 2000)
PFMA	Public Finance Management Act, 1999 (Act No. 1 of 1999)
PPI	Producer Price Index
RLM	Rustenburg Local Municipality
SADC	Southern African Development Community (SADC)
TWh	Terawatt-hour

1. APPLICABLE LAW

- a. The National Energy Regulator Act, 2004 (Act No. 40 of 2004)
- b. The Electricity Regulation Act, 2006 (Act No. 4 of 2006)
- c. The Electricity Pricing Policy (EPP)
- d. The Interim Framework for Long-Term Negotiated Pricing Agreements issued in terms of the Electricity Pricing Policy of the South African Electricity Supply Industry
- e. The Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

2. LEGAL MANDATE

- 2.1 The National Energy Regulator of South Africa (NERSA) is a juristic person established in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) ('the NERA'). NERSA, in accordance with section 4 of the NERA, is mandated to regulate the electricity industry and perform the powers and functions set out in section 4 of the Electricity Regulation Act, 2006 (Act No.4 of 2006) ('the ERA').
- 2.2 NERSA is specifically mandated to regulate prices and tariffs in accordance with section 4, 14 and 15 of the ERA. To this end, as provided in section 15(2) of the ERA, licensees are prohibited from charging a tariff that has not been determined or approved by the ER.
- 2.3 The ERA does not set out a legal framework on how any other tariff can be approved if the original tariff has already been approved and it is still valid. The Electricity Pricing Policy (EPP) establishes the answer to the lacuna.
- 2.4 EPP Position 14 (f), states that the 'DMRE [Department of Mineral Resources and Energy] must update the NPA pricing framework setting out the evaluation criteria. NERSA will approve and monitor the NPAs in accordance with the framework'.
- 2.5 The EPP empowers NERSA to deviate from a previously approved tariff by way of an application for a Negotiated Pricing Agreement (NPA). The EPP further stipulates that the DMRE must develop a transparent NPA application and approval process (i.e. a framework), which will set out the criteria against which NERSA evaluates, approves and monitors NPAs.
- 2.6 The Interim Framework for Long-Term Negotiated Pricing Agreement issued in terms of the Electricity Pricing Policy of the South African Electricity Supply Industry ('the Interim Framework') was approved by the DMRE on 28 September 2020. The Interim Framework enabled NERSA to evaluate this application and make a decision to approve the NPA.

- 2.7 The preamble to the framework states that ‘Pricing regulation is the responsibility of NERSA in terms of applicable legislation and energy policy, mainly the Electricity Pricing Policy (EPP)’.
- 2.8 It has been established that the NPA is a descendent of an approved tariff. If NERSA has not approved an existing tariff, it would be difficult to establish or consider an NPA. NERSA is therefore mandated to treat all NPA applications in accordance with the Interim Framework, as required by Policy Position 14(g) of the EPP.
- 2.9 The approval of an NPA by NERSA is an administrative action in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (‘PAJA’). The decisions of the ER must comply with section 10 of the NERA, read with the provisions of section 4 and 5 of PAJA.
- 2.10 This Reasons for Decision (RfD) document seeks to confirm that all the legal requisites have been observed.

3. INTRODUCTION

- 3.1 NPAs refer to price agreements that deviate from the approved standard tariff levels, structures, service fees, network standards and/or capital contributions. NPAs have served and could potentially serve as a valuable instrument to support projects that require price certainty over many years.
- 3.2 Glencore-Merafe Chrome Venture operates five ferrochrome smelter plants, one smelter in care and maintenance, and some chrome ore mines. Glencore-Merafe produces approximately half of South Africa’s ferrochrome output. This is in an unincorporated pooling and sharing venture between Glencore Operations South Africa (Pty) Ltd, Merafe Resources Limited and Merafe Ferrochrome and Mining (Pty) Ltd.
- 3.3 The application is for a six-year negotiated pricing agreement for the Rustenburg ferrochrome smelter, in terms of the Interim Framework, to facilitate the offering of incentive pricing, to enable the industry in South Africa to operate competitively in the sector. The Rustenburg smelter is located in the Rustenburg Local Municipality (‘RLM’) area of supply.
- 3.4 Glencore-Merafe has focused on efficiency improvements over the years, however, further improvements require substantial capital investment. Such improvements are not undertaken due to the uncertainty relating to the increasing electricity tariffs.

- 3.5 The proposed NPA is set at a level to ensure the sustainability of Glencore-Merafe, while covering the cost of supply of Eskom. The six-year NPA for the Glencore-Merafe Chrome Venture ferrochrome smelter operations in Rustenburg, North-West, is anticipated for a power block of 225 MVA.
- 3.6 The Glencore-Merafe smelters typically suspended a major part of their operations over the winter months, when there are high electricity tariffs, to reduce costs. The commodity market boom post-COVID, saw the smelter operating through the winter of 2022, resulting in increased electricity sales from the average historical consumption of approximately [REDACTED] TWh/annum. The commodity prices returning to pre-COVID levels is expected to result in a return to the historical consumption patterns.
- 3.7 The [REDACTED] of the proposed NPA will allow the smelters to operate throughout the year, sustaining an increase in sales. The proposed NPA will also assist the Glencore-Merafe smelters to be more resilient in terms of changing global market conditions.

4. THE APPLICANT

- 4.1 Eskom Holdings SOC Limited ('Eskom'), registration number 2002/015527/06, is a Schedule 2 South African state-owned enterprise in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) ('PFMA'), wholly owned by the South African Government. Eskom Holdings is regulated under licences granted by NERSA to generate, transmit and distribute electricity in terms of the ERA.
- 4.2 Eskom generates, transmits and distributes electricity to industrial, mining, commercial, agricultural and residential customers and other distributors. Eskom also buys electricity from and sells electricity to the countries of the Southern African Development Community (SADC).
- 4.3 Through its subsidiary, Eskom Enterprises (Pty) Limited, Eskom is also active in local unregulated markets and various African countries. These activities include the provision of electricity-related services to countries connected to the South African grid.

5. THE APPLICATION AND BACKGROUND

- 5.1 In May 2023, Eskom submitted an application for six-year NPAs for each of the five Glencore-Merafe Chrome Venture ferrochrome smelter operations in Mpumalanga, Limpopo and Northwest, in line with the interim framework for long-term NPAs.

- 5.2 Four of the five Glencore-Merafe Chrome ferrochrome smelters are directly supplied by Eskom, while one, namely the Rustenburg Smelter, is supplied by the RLM.
- 5.3 Eskom further stated that the NPAs are subject to an agreement between Eskom and the RLM, as well as an agreement between the RLM and Glencore-Merafe.
- 5.4 There was an impasse among the parties as to who the supplier of the smelter was and whether RLM was in agreement with the NPA. Subsequently, at its meeting of 26 October 2023, the Energy Regulator approved four of the five NPAs for the Glencore-Merafe Chrome ferrochrome smelters. The Rustenburg Glencore Operations (Pty) Ltd was excluded from the process to allow the RLM to make its own application on behalf of the Rustenburg Smelter.
- 5.5 On or about 27 July 2023, Glencore launched an urgent application in the High Court of South Africa, Gauteng, Division against NERSA, Eskom and the RLM relating to the exclusion of the Rustenburg Smelter by NERSA and the imposing of a 6.1% surcharge by the RLM.
- 5.6 On 10 November 2023, the High Court in the main, directed NERSA to deal with, consider and assess the Glencore-Merafe application in terms of the Interim Framework within the timelines set and declared that RLM may not impose a surcharge.
- 5.7 On 30 November 2023, the RLM filed an application for leave to appeal the judgement and orders of 10 November 2023. On 6 December 2023, Glencore issued an application in terms of section 18(3), read with section 18(1) of the Superior Courts Act, 2013 (Act No. 10 of 2013), seeking relief that the operation and execution of paragraphs 1 and 2 of the order granted by the Judge on 10 November 2023 are not suspended by the RLM's application for leave to appeal, or any subsequent appeal if leave to appeal is granted, as orders 1 and 2 are related to steps to be taken by NERSA to deal with, consider and assess the Glencore-Merafe application.
- 5.8 On 6 December 2023, an agreement was reached between the parties that the execution of orders 1 and 2 would proceed, resulting in the withdrawal of the section 18 application.
- 5.9 NERSA was not impeded from proceeding with the consideration of this application.

6. THE DECISION-MAKING PROCESS

- 6.1 On 21 November 2023, NERSA published Eskom's application for a six-year NPA with Glencore-Merafe for the Rustenburg ferrochrome smelter on the NERSA website, with an invitation to stakeholders to submit written comments. The application was also advertised in the *Business Day*, *Independent* and *Beeld* newspapers. The closing date for comments was 1 December 2023.
- 6.2 A virtual public hearing was conducted on 8 December 2023 in order to solicit comments from interested and affected stakeholders.
- 6.3 At its meeting of 14 December 2023, the Energy Regulator approved the NPA between Eskom Holdings SOC Limited and Glencore-Merafe Chrome Venture ferrochrome smelter operations, in Rustenburg, North-West.
- 6.4 The draft Reason for Decision (RfD) for the Eskom Holdings (Pty) Ltd application for a six-year Negotiated Pricing Agreement for the Glencore-Merafe Chrome Venture ferrochrome smelter operations in Rustenburg, North-West was also noted at the meeting of 14 December 2023.
- 6.5 The Energy Regulator plans to approve the final RfD at its meeting of 28 March 2024.

7. LEGAL CONSIDERATIONS

- 7.1 In its consideration, the Energy Regulator began by applying itself to the provisions of the RLM licence conditions, which provides that areas, in this instance supplied by Eskom, are excluded from the operation of the RLM licence.
- 7.2 The Energy Regulator also considered the information received from RLM and Eskom, which states that Eskom physically supplies the Rustenburg smelter, although the Rustenburg smelter is in RLM's area of supply.
- 7.3 The Energy Regulator took due cognisance of the judgment of the High Court of 10 November 2023, particularly the finding that Eskom is a *de facto* supplier of electricity to the Rustenburg Smelter. The Energy Regulator noted that the NPA is between Eskom and Glencore, with an ancillary agreement to be concluded between Eskom and the Municipality.
- 7.4 The Energy Regulator reflected on the issue of the surcharge, appreciating that this issue is before the Court as the subject of the application for leave to appeal and that any rectifications will follow the order of the Court.

- 7.5 In establishing whether there was an arrangement between Eskom and the Municipality in terms of section 28 of the ERA, which required compliance with other legislation, namely the Municipal Systems Act, 2000 (Act No. 32 of 2000) and the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), the Energy Regulator relied on the information and/or feedback received from Eskom and RLM that there is no service provider relationship, as contemplated in section 28 of the ERA, between the parties in respect of the Rustenburg Smelter.
- 7.6 In the absence of an arrangement in terms of section 28 of ERA, and considering the outcome of the judgement, which settled the issue, it would be unlawful for the Energy Regulator to conclude the consideration of the NPA application in any other way than to be between Eskom and Glencore.

8. LIST OF STAKEHOLDERS WHO COMMENTED ON THE CONSULTATION PAPER

- 8.1 NERSA only received written stakeholder comments from Eskom, whose comments have been analysed and discussed in Annexure 1.
- 8.2 The comments received from the public hearing have been analysed. The following stakeholders with a vested interest presented at the public hearing held on 1 December 2023:
- a) Eskom, as the applicant;
 - b) Glencore/SA Ferrochrome Smelting Industry, as the customer; and
 - c) National Union of Metalworkers of South Africa (NUMSA) as the union representing the workers of the Rustenburg smelter.

9. ANALYSIS OF THE APPLICATION

- 9.1 In analysing the application, NERSA was guided by the parameters outlined in the Interim Framework and the requirements of the EPP, Policy Position 14(f).
- 9.2 The following parameters were used:
- a) Alignment to the EPP
 - b) Net Contribution of Glencore-Merafe to the economy
 - c) Tariff Structure Analysis
 - d) Technical Benefits of the Glencore-Merafe NPA
 - e) Glencore-Merafe's electricity consumption
 - f) Impact on other users
 - g) Economic Impact Analysis
 - h) Risk assessment.

9.3 Alignment to the EPP

9.3.1 The Glencore-Merafe NPA application has been assessed against Policy Position 14 of the EPP, which provides guidance on the evaluation and approval process of the long-term NPAs. The NPA application aligns with Policy Position 14 of the EPP, as demonstrated by Table 1 below.

Table 1: EPP Policy Position 14

EPP Requirements	Compliance with EPP	Compliance		Reference to the Application
		Yes	No	
a) <i>NPAs are permitted, but must be structured in a way so as to minimise price distortions.</i>	The fixed cost of electricity supply remains, whether or not this proposed NPA is approved and implemented. As the proposed price level is higher than the variable cost of supply, implementation would result in a positive contribution to Eskom's fixed costs. This would reduce the contribution from the remaining customer base and therefore minimise price increases for other customers.	1		paragraph 10,1 (a) page 17 of the application
b) <i>Commodity price risk exposure must be hedged outside of the ESI [Electricity Supply Industry].</i>	The base tariff rate is ZAR denominated and has no commodity pricing linkages.	1		paragraph 10,1 (b) page 17 of the application
c) <i>Existing NPAs will be honoured until the end of the contract.</i>	This proposed NPA does not make provision for unilateral termination. Both parties would be contractually obliged to honour the proposed NPA, once approved and subsequently implemented, subject to the hardship clause.	1		paragraph 10,1 (c) page 18 of the application
d) <i>The evaluation of NPAs at inception must be based on the cost of supply (excluding cross-subsidies) on a discounted cash flow basis over the period of the agreement.</i>	The proposed NPAs have been evaluated on an average cost of supply basis. The average cost assessment is aligned to the Interim Long-term framework that indicates the assessment of the proposed tariff is to be against the cost of supply.	1		paragraph 10,1 (d) page 18 of the application
e) <i>DoE must develop a transparent NPA application and approval process to ensure adequate evaluation and consultation with key stakeholders including National Treasury.</i>	The DMRE consulted with various stakeholders (including National Treasury) in the development of the negotiated pricing agreement frameworks that provide guidance on the NPA application and approval process.	1		paragraph 10,1 (e) page 18 of the application
f) <i>DoE must update the NPA pricing framework setting out the evaluation criteria. NERSA will approve and monitor NPAs</i>	The DMRE issued the Interim long-term NPA Framework in 2020 to guide the evaluation, approval and monitoring of proposed long-term NPAs.	1		paragraph 10,1 (f) page 18 of the application

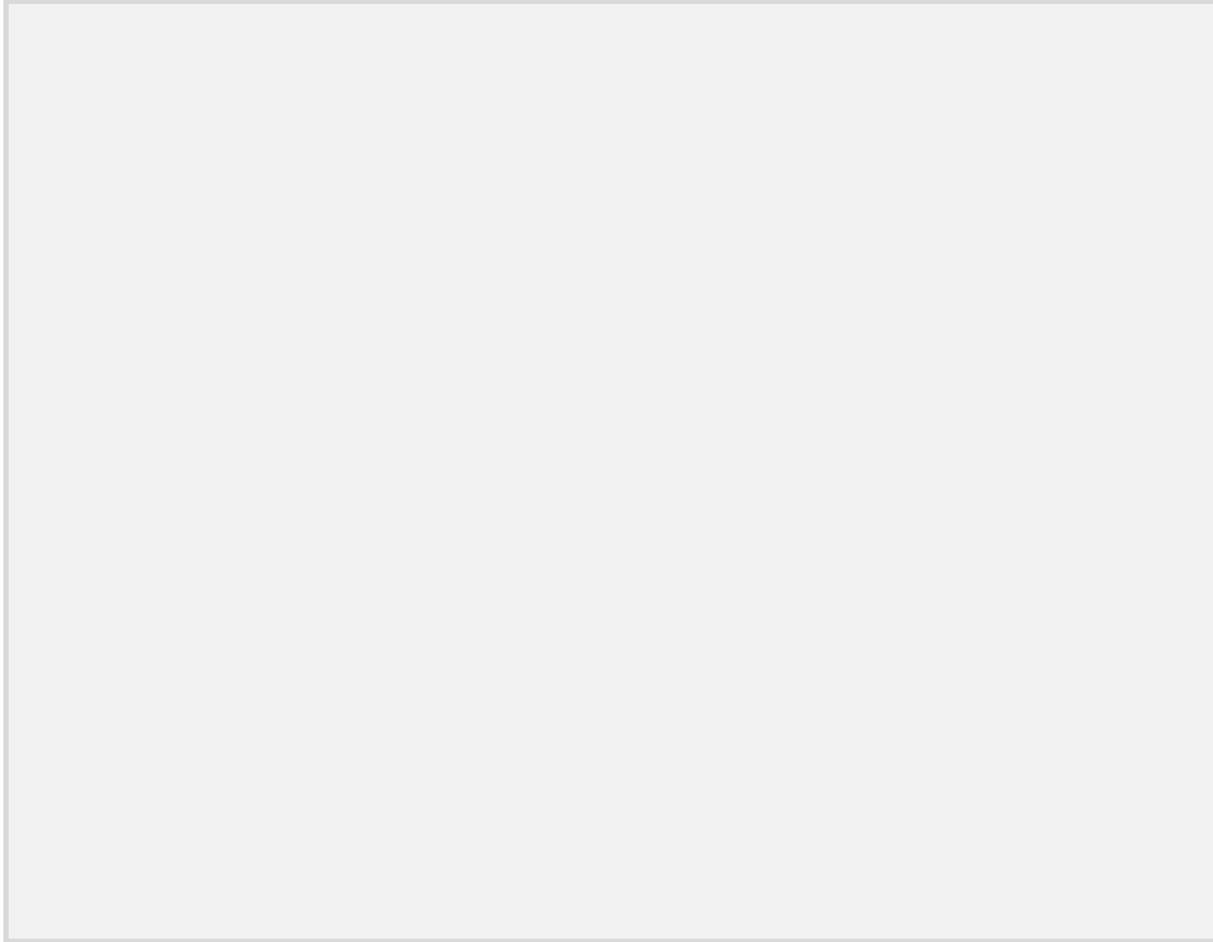
EPP Requirements	Compliance with EPP	Compliance		Reference to the Application
		Yes	No	
<i>in accordance with the framework.</i>				
<i>g) All applications must be treated in accordance with the approved processes and frameworks and be approved by NERSA.</i>	This application has been evaluated by Eskom on its own merits, taking into consideration the criteria and principles specific to the long-term NPA framework. Application is now made to NERSA for approval.	1		paragraph 10,1 (g) page 18 of the application
Number of items complied/not complied		7	0	
% compliance		100%		
Compliance indicator		Proceed		

9.3.2 The Glencore-Merafe NPA is also compliant with the Interim Framework for long-term NPAs.

9.4 Net Contribution of Glencore-Merafe to the Economy

9.4.1 Table 2 below illustrates the value of value of the ferrochrome industry in South Africa, as produced by Glencore-Merafe.

Table 2: Net contribution of Glencore to the economy



- 9.4.2 Table 2 above shows that the proposed price by Glencore will result in R[REDACTED] revenue to Eskom, given the [REDACTED]GWh consumption at an approximately [REDACTED] load factor. This assumption is based on the Glencore-Merafe ferrochrome smelters collectively. Eskom's total cost to supply Glencore amounts to R[REDACTED].
- 9.4.3 The difference between the revenue and the costs will result in a net contribution of R[REDACTED] by Glencore to Eskom's revenue. The total value of the ferrochrome value chain in SA amounts to approximately R[REDACTED] per annum, as shown in Table 2 above.
- 9.4.4 The finished goods produced by Glencore amount to R[REDACTED], which is expected to be realised in the South African economy due to the existence of Glencore-Merafe. The total Rand value of the downstream production is R[REDACTED]. Therefore, Glencore's contribution, combined with the downstream production, will amount to R[REDACTED].

9.4.5 In conclusion, if the NPA arrangement between Eskom and Glencore-Merafe is not approved, the South African economy will lose R [REDACTED].

9.5 Tariff Structure Analysis

9.5.1 This section will deal with the approach that has been adopted in the analysis of the proposed tariff structure. This, conducted in conjunction with the applicable framework, will include determining the rationale of providing an NPA to the customer, the present and projected revenue and operating cost assumptions, the escalation factor, as well as the assessment of price distortions.

The Applicable Framework

9.5.2 The Interim Framework for long-term Negotiated Pricing Agreements issued by the DMRE was developed to facilitate the provision of incentive pricing, to enable qualifying consumers to sustain and/or increase their use of electrical energy to support sustained and increasing economic activity in South Africa (SA).

9.5.3 The framework requires that the financial assessment of the reference base incentive price for an NPA be measured against the cost of supply, among other factors. According to the EPP, 'NPAs need to be evaluated against the appropriate price projections on a discounted basis over the life of the project. Factors that should be taken into consideration include period, TOU, location, voltage level and risks'.

Rationale of Providing NPA to Customer

9.5.4 The rationale for providing an NPA to a customer is to ensure that the variable costs of supply are recovered, and any revenue surplus should contribute to the fixed costs. In the absence of the NPA, this contribution to fixed costs would not be realised and would have to be absorbed by other customers resulting in higher future standard tariff increases for them i.e. higher than the impact of the NPA. This is demonstrated and quantified in Section 7.9: '*Impact on other End-users*'.

9.5.5 The incentive price level should be inclusive of an appropriate risk premium, and be as high a level as reasonably possible in consideration of the applicant's cost recovery and ultimate sustainability.

9.5.6 An energy loss factor of █% is added to the costs, which relates to Distribution-related losses. The revenue is based on the proposed minimum average rate of approximately █c/kWh at a consumption of █GWh/annum for the Glencore ferrochrome operations.

9.5.7 The escalation factor agreed upon for the base tariff is Producer Price Index (PPI) (based on the change in the year-on-year February SA Headline PPI) + █% and is to be applied on 1 April of each year.

Marginal/Contribution to Fixed Costs

9.5.8 Error! Reference source not found. below shows the revenue, cost of supply and marginal contribution to fixed costs. The assumption is that the implementation would be from the first day of the month, with at least one full calendar month between NERSA's approval and implementation date, and terminate 72 calendar months from the commencement date.

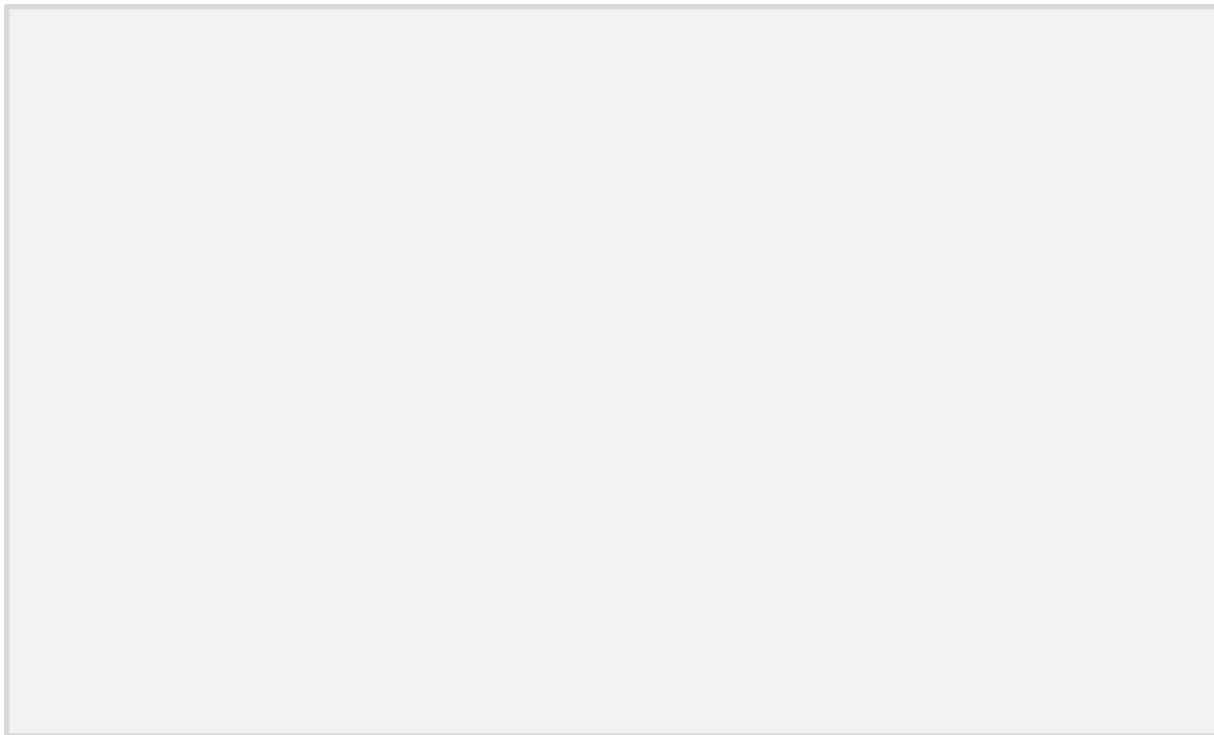


Figure 1: Marginal/contribution to fixed costs

Source: Glencore-Merafe Application

Revenue Impact

9.5.9 Error! Reference source not found. above clearly shows that for the duration of the NPA, the revenue to be generated under the NPA is higher than the generation costs and the contribution to fixed costs ranges from R█ to

R■■■■. This is considered efficient in terms of generating profits from operations.

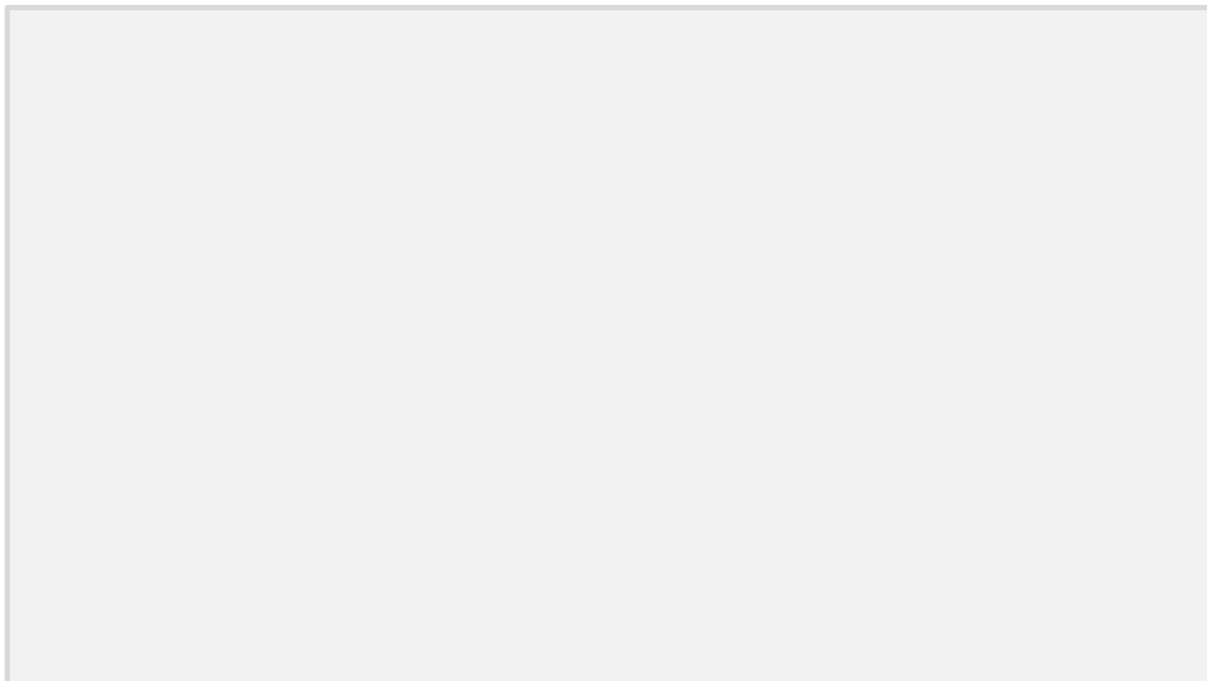
Average NPA Price

9.5.10 Table 4 below shows the calculation of the annual average that Eskom will be charging to Glencore from the date of inception and escalated by SA PPI headlines plus ■■■% for the duration of the NPA. The proposed revenues at inception exceed the cost of supplying the customer and is acceptable, as indicated in the table below.

SA Producer Price Index (PPI)

9.5.11 The PPI, as referred to above, indicates changes in producer prices of locally produced commodities and is used as a measure of the change in prices of goods at input or output stages of production. The use of the SA PPI for the Glencore-Merafe NPA, being a long-term contract, ensures that the inflationary risk over the period is mitigated while taking into account the contract price adjustments.

Figure 2 Average NPA pricing model



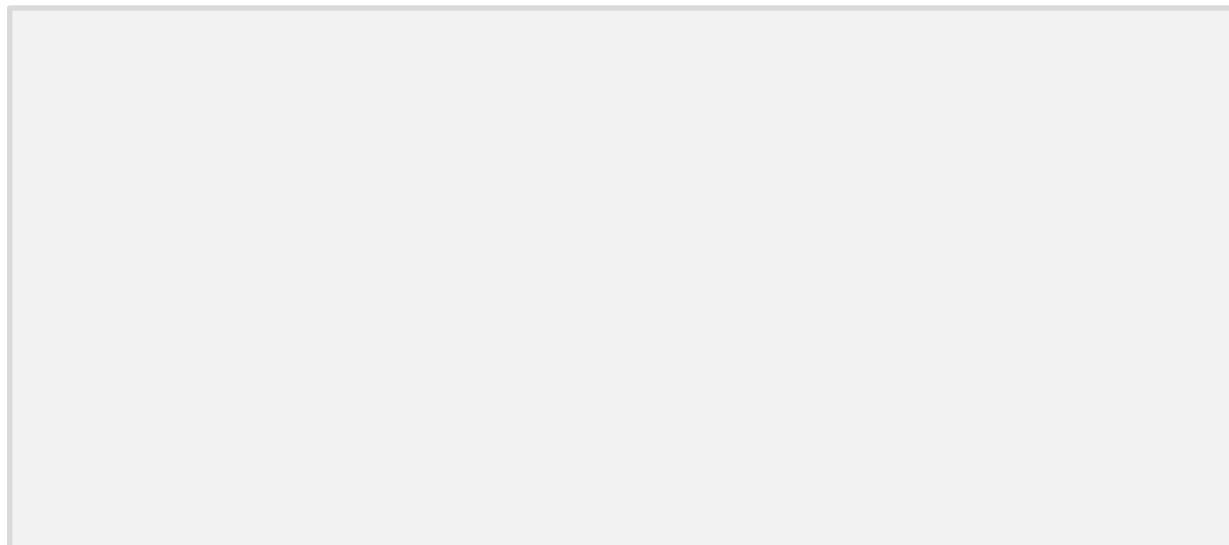
Source: Glencore Pricing Model

9.5.12 Figure 3 below demonstrates that with the assumed CPI adjustment to the generation costs and PPI headline plus ■■■% increase to the NPA, which is the landing negotiation adjustment agreed to by the two parties, the latter (NPA price) is greater than the former (the generation costs), meaning the NPA price

will cover the Eskom generation cost, as well as when Eskom's generation costs are added to the IPPs costs.

- 9.5.13 Since this comparison is based on the assumptions, during the six-month reporting control period, NERSA will closely monitor the relationship to ensure that the NPA price covers the generation costs and contributes to the fixed costs.

Figure 3: Average NPA price vs Eskom Gx cost and system cost (Eskom Gx + IPP cost)



Upside Sharing Arrangement

- 9.5.14 An upside sharing cost is payable when the contracted ferrochrome threshold price is triggered up to a maximum of the [REDACTED] tariff. This will ensure that the impact on other customers is minimised through the NPA, should the Glencore-Merafe ferrochrome smelters perform better financially than forecast.

NERSA Analysis

- 9.5.15 In applying the DMRE's interim long-term NPA framework, NERSA will be compliant with the requirement of *Policy Position 14* of the EPP of 2008, which prescribes that:
- a) DMRE must develop a transparent NPA application and approval process to ensure adequate evaluation and consultation with key stakeholders, including National Treasury.
 - b) The DMRE must update the NPA pricing framework, setting out the evaluation criteria. NERSA will approve and monitor NPAs in accordance with the framework.

c) All applications must be treated in accordance with the approved processes and frameworks and be approved by NERSA.

9.5.16 A six-year period is considered 'long-term' and though changes in pricing and demand can be expected within this period, no drastic changes have been foreseen in the forecasting. This especially holds true given the fact that Glencore demonstrates the ability to operate without requiring large network investments, and variable costs, as determined by the fifth Multi-Year Price Determination (MYPD5) (Primary Energy Costs), typically increase by single digits. For this reason, marginal costing is optimum.

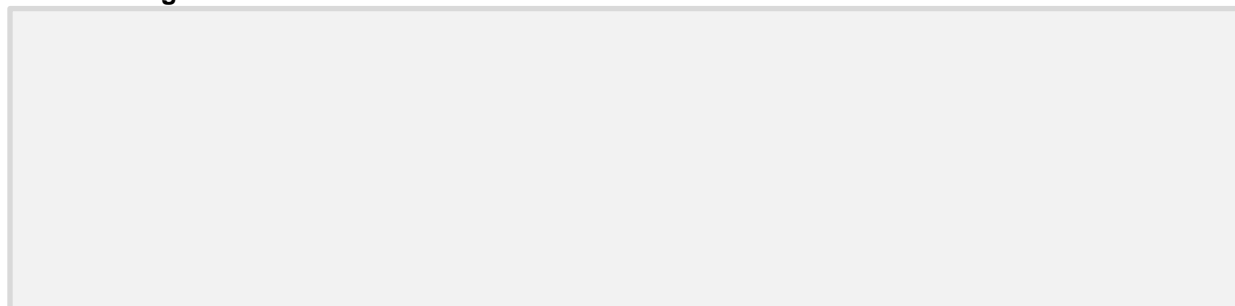
9.5.17 Energy losses are added to cover the cost of electrons that will be converted to heat and sound while being transmitted, which will also minimise the burden on other customers. The proposed NPA price and contracted volumes will result in a total revenue collection of R [REDACTED] for the duration of the NPA.

9.5.18 This being a negotiated price, the parties arrived at a landing position of PPI + [REDACTED]%. The negotiated price structure takes the following parameters into consideration:

- a) Glencore's competitiveness and sustainability.
- b) Electricity price increases that could otherwise be absorbed by other customers.
- c) The Take-or-Pay Provision.
- d) Interruptability, which will assist the System Operator with managing the power system (demand response). If the NPA is not granted, the load on the system would reduce significantly, and therefore require less usage of OCGTs. Granting the NPA would keep the customer on the grid, making use of interruptability as a mitigating factor in offloading the system as necessitated.

9.5.19 Table 3 below demonstrates the contribution to fixed costs, taking into consideration of practical implementation date of 1 December 2023.

Table 3: Marginal/contribution to Fixed Costs



Source: NERSA Recalculation

- 9.5.20 Table 3 above assumes the effective date of the Glencore NPA as the first day of the month, with at least one full calendar month between NERSA's approval and the implementation date; terminating 72 calendar months from the commencement date. The duration is equivalent to 72 months, and the average revenue in c/kWh is █% above the average cost to supply Glencore.
- 9.5.21 According to the EPP policy position 14:
a. NPAs are permitted, but must be structured in a way so as to minimize price distortions.
- 9.5.22 The pricing proposal is based on providing the Glencore ferrochrome smelters with an internationally competitive electricity tariff relative to the global industry. The Megaflex tariff structure is retained with █, and with no compensation to be paid for Demand Response.
- 9.5.23 This was done to minimise the price distortions as required by the EPP policy position 14 a).
- 9.5.24 The upside sharing cost arrangement will result in a higher electricity cost to Glencore when market conditions and ferrochrome prices are favourable. The provision therefore ensures that any benefits/favourable conditions are shared among all customers within the Electricity Supply Industry.

9.6 NPA Contract Duration

- 9.6.1 In terms the interim framework for long-term NPAs, the applicant may apply for a long-term NPA for a minimum duration of six years and a maximum duration of up to 10 years (120 months).
- 9.6.2 Eskom is applying for a six-year (72-month) long-term NPA for the Rustenburg smelter.
- 9.6.3 The main reason why a six-year duration is suitable, is that the six-year NPA will assist in keeping Rustenburg smelter globally competitive and operational, and will militate against the loss of Eskom's baseload electricity sales and mitigate the negative impact on other customers and the economy. There is however no guarantee of this; the viability of the industry is dependent on international commodity markets and competitive input costs.
- 9.6.4 Eskom has supported the six-year duration for the proposed NPA application in the written stakeholder comments and has further highlighted that the duration is an optimal balance between ensuring the commercial sustainability

of the SA ferrochrome smelters, and mitigating the risk of Eskom's underlying costs and the price diverging over time.

- 9.6.5 Therefore, the duration of six years is supported, as it will give the Rustenburg smelter an opportunity to remain sustainable and competitive globally. The duration of six years will also allow for certainty within the ferrochrome industry.

9.7 Technical Benefits of the Glencore-Merafe NPA Agreement

- 9.7.1 According to section 9.2 and 10.10 of the Interim Framework for Long-Term Negotiated Pricing Agreements.

The technical benefits of the NPA to the electricity supply system and the National System Operator with regard to minimum generation, system load factor, and system stability must be considered.

All consumers that are granted incentive benefits will be required to provide Interruptability when required, provided that it is technically feasible to do so without disproportionately impacting productive output.

- 9.7.2 The NPA is compliant with the above requirements of the Framework, as the Glencore ferrochrome smelters in Rustenburg will provide instantaneous and supplemental demand response with no compensation to the National Systems Operator to utilise when the system is constrained. This will ensure that Eskom can maximise the value of the interruptability by being able to interrupt the smelter's load in the periods of the highest cost of power, regardless of whether an emergency exists or not. As a result, Eskom is able to lower the amount of peaking plants required on the system based on the ability to use the smelter load reductions. In addition, Eskom is able to use the interruptability of the smelter to manage grid frequency whenever demand is larger than available supply, or visa-versa.

- 9.7.3 The smelters' load factor, after taking into account response to interruptability and peak demand reduction, is at approximately █%. This will ensure that the smelter's use of electricity throughout the month is consistent and assists in the full utilisation of Eskom's committed network capacity. The SA ferrochrome industry smelters are energy intensive baseload customers, with an average total electricity consumption of approximately █ TWh/per annum.

- 9.7.4 The smelter does not contribute to Eskom's peak demand as a result of its flat demand profile. The 24-hour operation of the smelter is taken into consideration for the contribution made to fixed costs by the long-term NPA. Since the smelter never shuts down, or ramps down demand, there is no loss

of contribution to fixed cost as a result of a decrease in energy consumption and consequential impact on other customers.

9.7.5 NERSA concludes that the Rustenburg smelter’s application is compliant with the requirements of the Interim Framework for Long-Term Negotiated Pricing Agreements. This implies that the approval of the NPA will sustain the use of electrical energy to support sustained and increasing economic activity in South Africa (SA), and in the process, better the utilisation of the existing capacity in the Electricity Supply Industry (ESI), which will benefit the economy as a whole.

9.8 **Glencore-Merafe Chrome Venture Electricity Consumption**

9.8.1 The basis for analysing this section emanates from section 7.4 of the Interim Framework for Long-Term NPAs aimed at sustaining and growing the South African economy. This section stipulates that the Applicant must consume, or the forecast annual consumption must be, a minimum of 80 Giga Watt Hours (GWh), and/or the load factor must be greater than 70% in order to apply.

9.8.2 The load factor is defined as a numerical factor reflecting the potential use of supply capacity based on the maximum demand. It is known as a ratio between the actual energy that could have been consumed had the demand remained at the maximum for a period. The load factor can be calculated for a number of different time periods i.e. daily, monthly and annually.

9.8.3 In a Formula Representation it would be:

$$\text{Load Factor} = \text{Energy Consumed} \div (\text{Maximum Demand} \times \text{Time Period in Hours})$$

9.8.4 Using the information provided by the applicant as indicated in Table 6 below, it was determined that the load factor will be above 70% for the duration of the NPA period.

Table 4: Information for Rustenburg Smelter

Smelter Name	Maximum Demand	Continuous Load Factor
Rustenburg	225MVA	Greater than 70%

9.8.5 Table 4 above shows the maximum demand and the load factor that is greater than 70%, which renders the smelter compliant with section 7.4 of the Interim Long-Term Framework NPAs, which requires that the load factor should not be less than 70%.

- 9.8.6 The South African ferrochrome smelters are energy-intensive customers that use baseload power 24/7/365. The baseload demand for smelters is constant, non-variable energy, consumed with a prevalent high load factor that is above 70%.
- 9.8.7 Ferrochrome smelting technologies differ, however, the base tariff offering will be the same for all. The more efficient technologies, from an electricity consumption perspective, will be more competitive, which should serve as an incentive to invest in process efficiency improvements to lower their average electricity tariffs.
- 9.8.8 The application is compliant with the framework, as its normal consumption is above 80 GWh.

9.9 Impact on other End-Users

- 9.9.1 The Rustenburg smelter will not be subsidised by other customers, as the proposed NPA tariff has been structured to ensure that all variable costs are recovered from Rustenburg, and a positive contribution is made towards fixed costs.
- 9.9.2 Section 9.1 of the Interim Long-Term Framework indicates that applications must be evaluated based on their own merits, taking account of the market conditions faced by the applicant and the applicant's competitiveness globally and within SA's borders.
- 9.9.3 Without an appropriate NPA, the sustainability of the Rustenburg smelter is in question, and could result in a potential cut-back in production or closure of the smelter in the medium term. It would also have a negative impact on Eskom by substantially reducing electricity sales and revenue.

Impact of the loss of the Rustenburg smelter's demand on the rest of the customer base

- 9.9.4 The proposed pricing arrangement has been structured to result in a globally competitive electricity tariff, as per the intent of the long-term NPA framework. It results in all variable costs being recovered, and a positive contribution being made to fixed costs. It must be highlighted that the NPA rate should not be viewed as a discount. Customers are better off with the smelter in the sales base due to its contribution to fixed costs, which would otherwise be borne by the remainder of the customer base.

- 9.9.5 The [REDACTED] NPA tariff is designed to result in an even consumption throughout the year, with a likely increase in sales that would partly offset the difference between the NPA tariff and the Megaflex tariff.
- 9.9.6 The implementation of the proposed NPA, if approved, will result in sustaining sales volumes, albeit at lower revenue levels. The [REDACTED] [REDACTED] NPA tariff could result in an increase in electricity sales.
- 9.9.7 Figures 4 and 5 shows the NPA cost breakdown, the Megaflex including subsidies and Megaflex excluding subsidies.

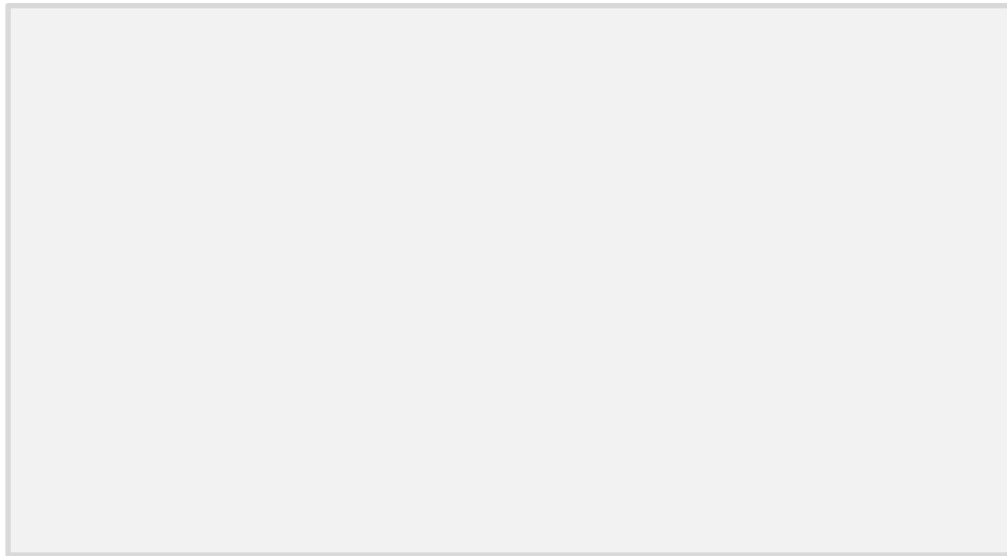


Figure 4: NPA Costs Breakdown

- 9.9.8 Figure 4 above illustrates that the NPA minimum price applied for by the licensee is [REDACTED] c/kWh, which is the floor price, meaning under no circumstance will the plant be charged below this rate. However, should the customer's consumption drop, it will result in a higher unit cost, as the fixed cost will be divided by lower volumes.
- 9.9.9 Based on Figure 4 above, it is clear that the approval of this NPA will result in Eskom generating R[REDACTED] of revenue (R[REDACTED] from energy charges, R[REDACTED] recovered in the form of fixed charges and R[REDACTED] in subsidies).
- 9.9.10 Due to the contracted capacity, customers will be encouraged to consume as close as possible to the maximum contracted demand in order to get the benefit of a lower price per unit.

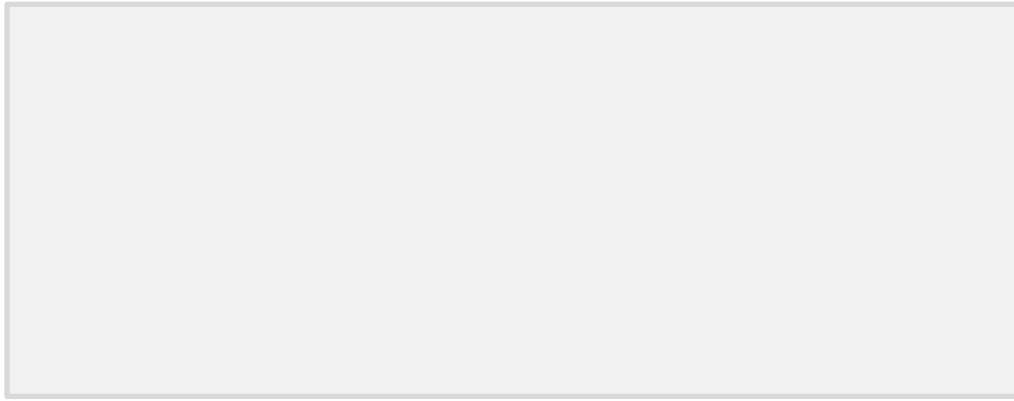


Figure 5: Megaflex including subsidies

9.9.11 On the other hand, the Megaflex tariff structure shows an average of [REDACTED] c/kWh. The main difference between the Megaflex and NPA is the fact that in the [REDACTED] [REDACTED] [REDACTED].

9.9.12 In conclusion, the NPA approval comes with the following benefit to Eskom and other customers:

9.9.12.1 Eskom – with or without the NPA, revenue neutrality will be maintained

9.9.12.2 Other Customers – will enjoy the benefit of demand response at no cost, as well as not bearing the costs of fixed charges and subsidies if this NPA is approved.

Compliance in terms of section 21(2) of the Electricity Regulation Act (ERA)

9.9.13 Section 21(2) of the ERA states that ‘A licensee may not discriminate between customers or classes of customers regarding access, tariffs, prices and conditions of service, except for objectively justifiable and identifiable differences approved by the Regulator’.

9.9.14 Section 15(2) of the ERA states that ‘A licensee may not charge a customer any other tariff and make use of provisions in agreements other than that determined or approved by the Regulator as part of its licensing conditions’. Read together with section 21(2) of the ERA, which states that ‘A licensee may not discriminate between customers or classes of customers regarding access, tariffs, prices and conditions of service, except for objectively justifiable and identifiable differences approved by the Regulator’, the licensee is prohibited from charging tariffs that are not approved by the Regulator and discriminating against customers, but makes space where there must be an application to the Regulator for approval. EPP Position 14, together with the DMRE NPA

framework, gives NERSA powers to approve deviations. By virtue of approving these NPAs, NERSA has approved that the licensee may discriminate between customer classes regarding the tariffs they charge.

- 9.9.15 Two regulatory tariff regimes exist. The first one is the approval of a tariff that will be applicable to all customers as at the date of approval. The second is that the Energy Regulator is called upon to approve a tariff applicable to a specific customer, after the approval of the general tariff.
- 9.9.16 The first regulatory tariff regime is anchored in either a methodology (that of Eskom) or a guideline (those of municipalities), while the other is premised on sections 15(2) and 21(2) of the Electricity Pricing Policy (Policy Position 14) and the Long-Term Framework developed by the DMRE.
- 9.9.17 In processing these NPAs and insulating the decision of the Energy Regulator for lawfulness and rationality, it was imperative that all the issues, including legal and economic issues, as well as the orderly development/management of the industry, must be taken into account.
- 9.9.18 Therefore, the approval of the Rustenburg NPA does not discriminate against other customers.

9.10 Economic Impact Analysis

- 9.10.1 According to section 9.3 of the interim long-term framework, consideration must be given to the key strategic and socio-economic impact in South Africa with regard to employment levels, beneficiation, taxes and levies, and the balance of payments.
- 9.10.2 The closure or cutback of production by customers negatively affects Eskom in terms of the loss of sales and revenue, as well as other technical benefits from baseload customers. A further consequence is that it has a further negative impact on the SA economy via reduced tax and levy collection, balance of payments/ZAR value, direct and indirect job losses, and an increase in social grants burden.
- 9.10.3 According to the information provided in the application, the following key strategic and socio-economic aspects have been taken into consideration with the proposed pricing arrangement for Glencore-Merafe Chrome:
 - a) The provision of downstream stainless-steel production in SA is reliant on locally produced ferrochrome.

- b) Promote SA as an investment destination, as articulated in the SA industrialisation drive, and that Eskom's reputation would be negatively affected by a significant cutback or loss of a major industry.
- c) The closure of ferrochrome smelters would have a negative impact on SA's balance of payments, and result in a loss of foreign earnings and reduced tax and levy collections.
- d) Assist in the retention of an industry in SA with associated economic benefits and which sustains direct jobs and generates many indirect jobs in the local economies at a time when unemployment in SA is increasing.
- e) The exporting of chrome ore, without beneficiation, would increase with the closure of ferrochrome smelters.
- f) Glencore-Merafe Chrome beneficiation is from 100% SA chrome ore deposits from the chrome mines located in the eastern and western limbs of the bushveld igneous complex.
- g) The Glencore-Merafe Chrome smelters directly employ [REDACTED] people and indirectly support an additional [REDACTED] permanent mining jobs. Glencore-Merafe Chrome further employ between [REDACTED] and [REDACTED] contractors depending on the level of active work, rebuilds, shutdowns, maintenance and projects throughout each year.
- h) The Glencore-Merafe Chrome smelters produce approximately [REDACTED] ktpa of ferrochrome and supply both the local market, and export to international markets.

Viability of ferrochrome sector

- 9.10.4 In its application, Eskom indicated that SA ferrochrome smelters have been placed under business rescue and/or closure and there has been a lack of investment in the sector. The viability of the sector is affected by a combination of power costs, chrome ore costs, furnace technology and size, and ferrochrome price. A large percentage of un-beneficiated chrome ore continues to be exported from SA to other producers, particularly to China and India, who despite higher chrome ore costs, can beneficiate at competitive rates.
- 9.10.5 According to Eskom, electricity is the largest input cost and as a result of the seasonal differentiation of the standard tariff, the ferrochrome industry in SA typically suspends a major part of their operations over the high tariff winter months to reduce their electricity consumption and cost. This reduces SA's beneficiation of chrome ore.
- 9.10.6 Eskom further states that the applicable standard tariff (Megaflex) has become increasingly unsustainable for SA ferrochrome smelters. Electricity's relative percentage of production costs has increased significantly from [REDACTED]% in

2008 (at ~■■■ c/kWh) to ■■■% in 2022 (at ~■■■ c/kWh). The effective standard tariff for the smelters will be ~164 c/kWh in FY2023/24, with the latest 18.65% increase. The higher increases in electricity tariff, relative to other costs, result in electricity becoming a greater relative percentage of the smelters production cost base.

Glencore-Merafe smelters benefit to the SA economy

- 9.10.7 With the comparatively high electricity tariffs having a negative impact on costs, the SA ferrochrome smelters are moving towards becoming a marginal smelting capacity. Indications are that without an electricity pricing mechanism to make the SA smelters more competitive, companies would be forced to review their production capacity. The following are the anticipated benefits to the economy, as indicated in the application:
- a) Glencore-Merafe beneficiation is from 100% SA chrome ore deposits.
 - b) The Glencore-Merafe smelters directly employ ■■■ people and ■■■ contractors, and indirectly support mining jobs at chrome and platinum mines in SA.
 - c) Glencore-Merafe plants produce ~■■■ ktpa of ferrochrome to supply the local market and export to international markets.
- 9.10.8 Electricity is the largest cost component, followed by chrome ore feed and reductants.
- 9.10.9 The Glencore-Merafe smelters typically suspend a major part of their operations over the high electricity tariff winter months to reduce costs. With the commodity market boom post-COVID, the smelters operated through the winter 2022 period, resulting in increased electricity sales from the average historical consumption of approximately ■■■ TWh/annum, excl. Lydenburg. With commodity markets returning to pre-COVID levels, a return to historical consumption patterns is expected. The ■■■ of the proposed NPA will result in an increase in sales. The proposed NPA will also assist the Glencore-Merafe smelters to be more resilient in terms of changing global market conditions, as indicated in section.
- 9.10.10 SA smelter profits are affected by the market price of ferrochrome (US\$/pound) and the exchange rate (ZAR/USD), as input costs are primarily ZAR based. There is also a direct correlation between the power consumed and tonnages of ferrochrome produced, which has an impact on the revenue and profits of a smelter. Therefore, the proposed pricing arrangement will contribute to sustaining Glencore-Merafe Chrome and retaining one of Eskom's largest customer at a time when the SA economy is stagnating and SA is embarking

on an industrialisation drive. Notwithstanding the challenges facing Eskom, it will offer financial and other benefits to Eskom and SA while ensuring that all other customers are better off.

Contribution of Glencore-Merafe to Rustenburg Municipality

- 9.10.11 The Rustenburg Local Municipality is located in the eastern parts of the North-West Province, in the Bojanala District Municipality. The total population of the Rustenburg Local Municipality is 56 2031 according to the Stats S.A 2022 census.
- 9.10.12 The unemployment rate in RLM was estimated at 31.02% in 2020, as per RLM's annual report for 2022/23. The unemployed include all persons between 15 and 65 age who are currently not working, but who are actively looking for work. A contributing factor to the high unemployment rate is the level of education and literacy. Rustenburg's economy is largely concentrated on the platinum mining industries, which contributed 66% to provincial GVA in 2013. The municipality is the largest producer of platinum, with approximately 70% of the world's platinum production, followed by Russia and Canada.
- 9.10.13 The impact of the closure of ferrochrome smelters would have a negative impact on SA's balance of payments, and result in a loss of foreign earnings and reduced tax and levy collection, as the local industries cannot absorb all the available labour in the market. The retention of the industries in SA, with associated economic benefits, will sustain direct jobs and generate many indirect jobs in the local economies at a time when unemployment in SA is increasing.
- 9.10.14 The unemployed persons will no longer have the means to contribute to the local economy. The economic and social (health, education, social equity, skills development, etc.) impact on individuals, businesses, and communities will be negative and potentially irreversible. This will result in additional welfare support needed from the Government. The plant's closure will reduce economic diversification in the local economy.
- 9.10.15 In conclusion, the application is compliant with the requirements of the framework, as the key strategic and socio-economic impact on SA has been provided.

9.11 Risk Assessment

9.11.1 Table 5 below outlines the risk mitigation to these and other risks identified by both the applicant and the licensee.

Table 5: Risk Assessment

Risk	Applicant Mitigation	NERSA Analysis
Hardship	Either party shall have the right to give three months' notice in writing to cancel the agreement should unforeseen taxes, levies or duties result in either party facing significant hardship.	NERSA is satisfied with the provision for hardships to militate against the changing financial circumstances of either party. Revisions to the agreement as a result of hardship must be approved by the Energy Regulator to militate against either party acting unfairly.
Windfall Profits	When economic conditions are in the ferrochrome smelter's favour, a payment, i.e. higher tariff, is payable to Eskom. This is to ensure that the smelter does not make windfall profits and that the rest of the customer base benefits.	NERSA is satisfied with this provision to ensure that Glencore-Merafe does not unfairly benefit from the NPA at the expense of the rest of the customer base, given that the NPA is provided to assist industries in need. This provision therefore ensures that, should the smelter find itself in a positive financial position due to favourable market conditions, it is able to contribute more towards the fixed costs to the benefit of the rest of the customer base.
Cost of Supply increasing	Eskom's cost base is being addressed to decrease input costs. The proposed pricing agreement has a commencement tariff significantly above the cost of supply and also provides for a real escalation in the tariff that will alleviate the impact of any real percentage increases of Eskom costs.	The agreement highlights that the base price will increase by the PPI to provide price stability for the applicant, as well transparency for the industry, including the rest of the customer base. This provision is supported by NERSA, as it protects the rest of the customer base by covering the costs associated with supplying the applicant.
Revenue and Demand Security/Take-or-Pay	Glencore-Merafe will be liable for a minimum consumption payment based on ■% of consumption, measured over each calendar quarter for each smelter, and adjusted for demand response. Eskom will adjust this requirement for substantiated significant events that prevented operating normally such as network outages, planned maintenance, furnace outages of a technical nature and industrial action.	NERSA notes the provision to ensure that the applicant consumes at least as much as agreed upon. The provision compels the applicant to meet the committed demand to enable the licensee to have predictability in terms of the revenue to be obtained from the applicant. Should the applicant fail to consume the appropriate volumes and the root cause is found to be outside of the applicants control, these must be communicated to the Energy Regulator to note during its monitoring of the agreement. This take-or-pay provision holds the applicant to minimum volumes consumed and seeks to shield the rest of the customer base from reduced collection by

		the licensee. This provision is supported by the Energy Regulator.
NPA Impact on Other Customers	<p>Other ferrochrome smelters in SA are likely to qualify for a similar NPA pricing structure, increasing the implied incentive rebate for the sector. To minimise the impact on other customers, NPAs should be limited to customers who are energy intensive and a standard 'industry tariff' should be developed to assist other large industries. Alternative funding should be found by Government to support other strategic industries and to fund the social subsidies embedded in electricity tariffs.</p> <p>Industry and Eskom have engaged with various Government departments, specifically the Department of Trade, Industry and Competition (DTIC), to investigate options for the fiscus to support industry. This has not resulted in any options being proposed, as the fiscus itself is facing significant challenges to meet the SA economy requirements.</p>	<p>Section 9.1 of the Long-Term Framework indicates that NPA applications will be evaluated on their own merit, taking account of the market conditions faced by the applicant and the applicant's competitiveness globally and within the South African borders.</p> <p>Furthermore, the intent of the long-term NPA framework is that the proposed pricing arrangement is structured to result in a globally competitive tariff and this will in turn result in all variable costs being recovered and a positive contribution made to fixed costs. Customers are better off with the smelters in the sales base due to the contribution to fixed costs which would otherwise be borne by the remainder of the customer base.</p>
Revenue Recovery Certainty	<p>The NPA Framework makes provision for any revenue impact to Eskom to be recovered through the applicable regulatory mechanism. Should NERSA change the methodology that negates this, the parties are to engage to revise terms. If agreement cannot be found, either party has the right to terminate giving three months' written notice.</p>	<p>NERSA notes the identified risk, and should the Electricity Pricing Rule introduce changes such that the NPA is affected, both parties can approach the Energy Regulator to review the agreement or set it aside in the event that it is no longer beneficial.</p>

10. CONFIDENTIALITY

10.1 All the figures are confidential and have been approved by the Energy Regulator as such.

11. CONCLUSION AND RECOMMENDATION

11.1 In light of the evidence presented and analysed above, it can be concluded that under the current terms of the NPA, Eskom will be cushioned from losses by recovering its costs, plus a small margin, through the provision of the variable PPI escalation and the fixed-cost increase. The deal can therefore be seen as a win-win, both for Eskom and Glencore-Merafe, which will continue its operations as a result of the NPA, thus continuing to be of benefit to the local economy in Rustenburg and North-West, as well as the South African economy at large.

11.2 Therefore, from a conspectus of the facts and evidence presented to the Energy Regulator, it is appropriate to consider and approve a separate six-year Negotiated Pricing Agreement for the Glencore-Merafe Chrome Venture ferrochrome smelter operations in Rustenburg and North-West.

End.

ANNEXURE 1: SUMMARY OF WRITTEN STAKEHOLDER COMMENTS

	Category	Stakeholder Comment	NERSA Analysis
1.	General comments on NPAs	<p>1. Eskom is supportive of assisting, where it can, to further South African industrial policy. However, the Electricity Supply Industry (ESI) is unable to support all applications for negotiated pricing agreements (NPAs) and a mechanism is required to determine which industries or sectors should be prioritised for electricity price support.</p> <p>2. Eskom's preference for NPAs is to prioritise industries where the electricity costs make up a significant percentage of operating costs and, therefore, the largest impact on sustainability.</p> <p>3. The NPA frameworks make provision for any revenue shortfall to be recovered through the applicable regulatory mechanism, and the consequence is that the remainder of the customer base will subsidise this through further tariff increases. Alternate funding options outside of the ESI should be explored to sustain vulnerable sectors in the economy.</p>	NERSA notes and welcomes Eskom's support of the NPAs as one of the industrial policies to drive sustainability in the Electricity Supply Industry. NERSA is willing to work with Eskom in its quest to determine industries and sectors to be prioritised for electricity price support in accordance with the government's strategic plan.
2.	Comments on timeline and counterparty	While Eskom included the Rustenburg ferrochrome smelter in its application, it was clearly indicated that the RLM is the supplier by virtue of it being in their licensed area of supply and the	NERSA notes Eskom's comment. However, The North Gauteng High Court ruled that the Rustenburg smelter, currently operating five furnaces, has been supplied electricity out of this

		application was subject to RLM support.	substation by Eskom for a long time. Eskom has not purported that it is the agent of the RLM and clarified that Eskom is the supplier of the Rustenburg smelter.
3.	<i>The proposed consultation and approval process – Communication of decision on 14 December 2023</i>	While Eskom notes the Court Order, the Glencore-Merafe Rustenburg ferrochrome smelter does not fall within Eskom's area of supply/licence area. Contracting for the NPA would have to be between Eskom and the RLM and then the RLM and the smelter. Implementation aligned to the other already approved ferrochrome smelters would be a challenge.	NERSA notes Eskom's comment. However, NERSA is of the view that Eskom will be in violation of the Court Order.

No.	Questions from the consultation paper	Stakeholder Comment	NERSA Analysis
1.	<i>Propose a suitable base price escalation mechanism that minimises price distortions between NPA and non-NPA customers over the six-year period but also provides price certainty to Glencore-Merafe Chrome Venture</i>	<p>i.) The PPI is the relevant base index by which licensee costs should escalate.</p> <p>ii.) Real increases would mitigate cost increases above PPI and minimise price distortions.</p> <p>iii.) A real increase, as proposed, would minimise Eskom's risk on the cost of supply exceeding the revenue generated but still result in the Glencore-Merafe smelters remaining viable.</p>	<p>Escalation using PPI is the most acceptable method of adjusting the base price. This will ensure that the real increase is achieved, which will cover the escalated costs of supplying power.</p> <p>The PPI escalation balances Eskom's risk on cost increases and has some advantage of</p>

		iv.) The application of MYPD increases would not provide applicants with certainty on the price path.	providing price certainty and proposed real increase.
2.	<i>If Glencore-Merafe Chrome Venture wants to increase the contracted capacity at a later stage during the tenure of the contract, should this additional demand be subject to the existing NPA conditions, or should it be considered a new NPA application that may have different conditions? Should there be a time frame within which to increase the power demand?</i>	<p>Eskom is of the view that the application is for a specific notified maximum demand (contracted capacity) for each Glencore-Merafe smelter and does not propose an increase in contracted capacity for power.</p> <p>Any request for an increase in the power demand should not be part of this NPA and should be subject to a new or revised NPA application.</p>	<p>An increase in the contracted capacity will result in a new NPA application, as the request for an increase after approval is not catered for in the approved framework.</p> <p>The Energy Regulator will apply its mind to conclude on the appropriate percentage over and above the existing NPA electricity consumption. In applying its mind, the Energy Regulator must balance the interest of the applicant and the price impact on other customers.</p>
3.	<i>Do you think that the demand response is an appropriate program to assist the system?</i>	<p>The demand response (DR) provided by the Glencore-Merafe smelters is both instantaneous and supplemental DR and meets the Eskom requirements in terms of the approved DR program.</p> <p>The DR (hours and % of load) to be provided is aligned to what is currently provided by the smelters and is a balance between managing smelter operations and the negative</p>	<p>NERSA notes the comments raised by the stakeholder. Eskom and Glencore-Merafe should agree on the existing parameters.</p>

		impact of interruption and supporting the stability of system.	
4.	<i>Comment on the assumption that the Commodities Research Unit (CRU) International indicated that the SA ferrochrome sector's electricity costs are well above the global average and how NERSA should handle this application, considering that electricity constitutes 30% to 35% of production costs for the SA ferrochrome industry.</i>	<p>CRU is a reputable international commodity research organisation that gathers information from industry players and stakeholders.</p> <p>The framework requires that electricity be one of the top three cost items, and states that electricity is the largest cost component followed by chrome ore feed and reductants.</p> <p>The applicable standard tariff (Megaflex) is becoming increasingly unsustainable for SA ferrochrome smelters. Electricity's relative percentage of production costs has increased significantly from 2008, and the latest 18.65% increase will further raise the relative percentage.</p>	<p>NERSA acknowledges that CRU is a reputable international commodity research organisation that gathers information from industry players and stakeholders.</p> <p>Each application will be treated on a case-by-case basis, taking into account the market dynamics faced by the applicant and the licensee. Industry dynamics are not the same for each sector; some sectors' electricity costs may not make up ■% of operational costs.</p> <p>Sectors that are aligned with an industrial policy action plan will also be considered.</p>
5.	<i>The interim long-term framework allows NPAs with a duration of six to ten years. Comment on the most suitable NPA contract period, taking into account the interest of Eskom, Glencore</i>	i. The proposed NPA of six-year duration with real increases provides an optimal balance between ensuring the commercial sustainability of the SA ferrochrome smelters and the risk of Eskom's underlying costs and the price diverging over time.	NERSA notes the stakeholder's support of six to ten years, indicating that the duration is reasonable to minimise the risk of the NPA price not covering costs.

	Chrome and other Eskom customers.	ii. Customers would prefer longer NPAs to provide certainty aligned to the economic life of their operations, however, would expose Eskom and the remainder of the customer base to higher cost risk.	
6.	Comment on the correctness of this statement in relation to the ferrochrome smelters or similar metals industry.	<p>i. Electricity is one of the factors impacting the sustainability of industry in South Africa. The larger the percentage that electricity makes up of input costs, the more sensitive the operation is to electricity cost.</p> <p>ii. Other countries with industry competitiveness at risk have intervened with, for example, long-term pricing agreements with escalation certainty, substantive rebate arrangements and reduced tax and/or subsidy burdens.</p> <p>iii. In recent years some SA smelters have been placed under business rescue and/or closure, and there has been a lack of investment in the sector. The sector's viability is impacted by a combination of power costs, chrome ore costs, furnace technology and size, and ferrochrome price.</p>	An NPA plays a crucial role. It is evident from the previously approved NPA that without price stability/predictability, local companies will not be allocated production.
7.	Propose how other competitiveness factors (except electricity) can be used to improve the	i. Eskom understands that Glencore-Merafe has looked at all opportunities to optimise its cost base for the smelters, and further reductions in	NERSA notes the stakeholder's proposal addressing the competitiveness factor in an all-inclusive, coordinated

	<i>sustainability of the Rustenburg smelter.</i>	<p>these costs are unlikely to sustain the smelters without affecting operations.</p> <p>ii. For South Africa to be globally cost-competitive, the country must, in an inclusive, coordinated manner, address all competitiveness factors such as logistics, labour, policy certainty, and not only electricity.</p>	<p>manner. NERSA is involving other key stakeholders, such as the Department of Trade, Industry and Competition and Transnet, to find ways to assist companies.</p>
8.	<i>Comment on the suitability of the above methodology to calculate the base price in comparison to the proposal in sections 10.5 and 10.6 of the attached framework.</i>	<p>i. The methodology indicated in statement 5.8 of the consultation paper is factually incorrect and is not the methodology applied. Please refer to 6.1 and 6.2 of the Eskom Glencore-Merafe application.</p> <p>ii. The methodology and base incentive price proposed in the application is aligned with the considerations in 10.5 and 10.6 of the Framework. It considers affordability and sector sensitivity to electricity prices and provision of demand response to the System Operator.</p>	<p>The final reasons for decision will reflect the fact that the base price was derived at by applying information sourced from CRU on the electricity tariffs paid by ferrochrome smelters worldwide.</p> <p>This approach is considered reasonable since the NPA's objective is to avert company's closure, reinstating plants that are on care maintenance, which will ultimately eradicate job losses, and objectives will be achieved by making local companies competitive internationally.</p>
9.	<i>Should NERSA allow re-openers when there are market changes?</i>	<p>i. Certainty is required by both parties and market changes are part of the cyclical nature of commodity-based businesses. Price adjustments or resets during the NPA period, which were not contracted initially, would remove the certainty required</p>	<p>The stakeholder is completely against the re-openers, stating that they defeat the major objective of the NPA, which is certainty.</p> <p>As mitigated, there is a clause that states:</p>

		<p>by the applicant. Applicants should still be exposed to their market risks, as the electricity consumer cannot assume this risk.</p> <p>ii. Reopeners should not be allowed due to market changes.</p> <p>iii. Should significant hardship result from a change in law or increased costs due to unforeseen taxes, levies, or other imposed charges be experienced, parties should explore other options to prevent closure and termination of the NPA. This is included in the proposed NPA.</p>	<p><i>The party experiencing hardship shall have the right to approach the other party to revise terms that would relieve the hardship, and should the parties fail to agree revised terms or NERSA fail to approve such agreed revised terms, the party experiencing the hardship shall have the right to terminate the agreement, giving three calendar months' notice.</i></p> <p>This clause is unequivocal that the stakeholder is of the view that termination should be the last resort.</p>
10.	<p><i>The agreement applied for is a long-term period of six years. Stakeholders are requested to comment on the following:</i></p> <ul style="list-style-type: none"> <i>• Risks created by such long-term agreement.</i> <i>• How those risks should be better mitigated.</i> <p><i>Should such agreement be terminated by hardship, which</i></p>	<p>i. NPA provides revenue certainty to the licensee.</p> <p>ii. To limit the deviation of NPA from standard tariff, the NPA tariff (initial base price and annual escalation) should be set at levels based on projected costs of supply over the full duration of the NPA. An additional allowance should then be added at inception for risk that the assumptions change.</p> <p>iii. NPAs should be limited, and alternate funding mechanisms outside of the ESI should be explored to</p>	<p>At the inception, NERSA tests to ensure the base price will cover the costs on the discounted cash flow basis for the duration of the NPA. The reason for undertaking such exercise is to ensure the customers in NPAs are not unduly subsidised by the rest of the standard customers.</p> <p>Moreover, NERSA encourages other key industry players on possible mechanisms to make local companies competitive globally.</p>

	<i>mechanism should the Energy Regulator employ to protect the remaining customers from high price increase?</i>	sustain vulnerable sectors in the economy. i iv. Termination for convenience or hardship removes certainty for both parties and is unlikely to be acceptable. Any termination clause considered should focus on factors outside of either party's control, for example unforeseen taxes.	
11.	<i>Please comment on the proposed NPA, its structure, fairness and impact. Please substantiate your response.</i>	Eskom is of the view that the proposed NPA is aligned with the NPA frameworks and will offer financial and other benefits to Eskom and South Africa while ensuring that all other customers are better off relative to the loss of sales due to cutback in production or closure of smelters. The NPA tariff level considers the sustainability of the Glencore-Merafe smelters and Eskom's cost of supply and is structured to best address and balance the needs of the smelters and Eskom.	NERSA agrees with the stakeholder comment, and is of the view that NPAs are important instruments in supporting and promoting investment in the Electricity Supply Industry (ESI)
12.	<i>Please comment on whether the rest of the customer base will benefit positively from the implementation of this Rustenburg Smelter NPA.</i>	Baseload provides system stability. Eskom is of the view that with the increase in variable renewable plants on the system, the large base load at low demand times that the Glencore-Merafe smelters	The NPA tariff has been structured to ensure that applicable costs are recovered and a positive contribution is made to fixed costs associated with supplying the applicant.

		<p>provide assists in minimising curtailment of IPPs and the negative cost impact of minimum generation events.</p> <p>DR is important to the System Operator in managing the power system and is used to limit the severity of load-shedding.</p> <p>The NPA mitigates the potential loss of sales due to cutbacks in production or closure of smelters. The contribution to fixed costs from these sales would otherwise be borne by the remainder of the customer base.</p>	
13.	No stakeholder comment #13		
14.	Please comment on the reasonableness of this time frame. What should happen if implementation delays beyond the one-month period?	<p>The ideal would be to align the commencement date of the NPA of the Rustenburg ferrochrome smelter with the other approved ferrochrome industry NPAs. However, additional complications arise due to the urgency with which this application is being processed and the Rustenburg smelter falling within the Rustenburg Local Municipality licence area. Agreements between counterparties would need to be put in place.</p>	<p>NERSA notes the comments raised by the stakeholder. The Rustenburg ferrochrome smelter is within the Rustenburg Municipality areas of supply and agreements must be put in place before implementation of the NPA.</p> <p>The proposal of at least one full calendar month before implementation is supported to allow for the technical logistics in place.</p>

		The proposal of at least one full calendar month period allows for proper implementation.	If implementation delays beyond the one-month period, NERSA must be informed of the reasons for the delay.
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