

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE 4199 OF 2026

MR K. MILEHAM, MP

**NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL
AND INVITATION FOR COMMENT ON THE DRAFT ELECTRICITY
REGULATION AMENDMENT BILL, 2026**

Mr K. Mileham, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Electricity Regulation Amendment Bill, 2026 ("draft Bill"), in Parliament. An explanatory summary of the draft Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

The draft Bill seeks to close the accountability gaps that have allowed the National Energy Regulator ("NERSA") to preside over R54.7 billion in calculation errors without consequence. The draft Bill codifies the principle of finality, regarding tariffs set or approved by NERSA, to ensure that the South African consumer does not bear the financial cost of any calculation errors.

In accordance with the recent North Gauteng High Court judgments of *Afriforum v NERSA & Others* ("Afriforum judgment") and *Eskom v NERSA & Others*, the draft Bill provides that any error made in respect of the setting or approval of a tariff may only be corrected, varied, or set aside by judicial review. The aforesaid will therefore end the practice of labelling multi-billion rand calculation errors as "clerical errors" in order to avoid public scrutiny.

Furthermore, the draft Bill ensures that a tariff set or approved by NERSA may not be implemented in a financial year that has already commenced and must be applied prospectively in order to avoid back-dated retrospective "clawbacks" that ignore the *functus officio* doctrine. In accordance with the *Afriforum* judgment, the draft Bill mandates that cost of supply studies must accompany all tariff applications submitted to NERSA in order to end the era of "benchmarking" and unsubstantiated municipal hikes that have left consumers facing potential retrospective and retroactive billing chaos.

In summary, the draft Bill is a direct intervention to restore the rule of law to energy regulation and to ensure that technical failure by the state does not continue to manifest as an assault of the wallets of ordinary citizens.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this

notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker, P O Box 15 Cape Town 8000, or emailed to electricityrabill@parliament.gov.za and copied to legislation@da.org.za

Copies of the draft Bill may be obtained by emailing legislation@da.org.za

REPUBLIC OF SOUTH AFRICA

ELECTRICITY REGULATION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill and prior notice of its introduction published in Government Gazette
No. 55542 of 16 October 2026)
(The English text is the official text of the Bill)*

(Mr. K. Mileham, MP)

GENERAL EXPLANATORY NOTE:

[] Words in bold type and in square brackets indicate omissions (proposed deletions) from existing enactments.

_____ Words, underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Electricity Regulation Act, 2006, so as to insert certain definitions; to provide for the tariff application process; to provide that a tariff application must be accompanied by a cost of supply study; to provide that a tariff set or approved by the Regulator may not be implemented in a financial year which has already commenced and may not have any retrospective effect; to provide that a tariff may only be corrected, varied or set aside by judicial review; to provide for rules regarding tariff applications and cost of supply studies; to amend the arrangement of sections; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the National Energy Regulator has a fundamental mandate to protect consumers and ensure the long-term sustainability of the electricity supply industry;

AND WHEREAS the High Court of South Africa has repeatedly struck down decisions regarding tariffs made by the National Energy Regulator in secret, and without public knowledge, including municipal tariffs approved without verified data, as being unconstitutional and irrational;

AND WHEREAS legislative certainty is required to prevent the retrospective recovery of regulatory mistakes from already overburdened households and businesses,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 4 of 2006, as amended by section 1 of Act 28 of 2007 and section 1 of Act 38 of 2024

1. Section 1 of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the insertion before the definition of "customer" of the following definition:

" **'cost of supply study'** means a comprehensive financial assessment undertaken by a licensee to determine the total economic cost of rendering electricity services to customers;"

(b) by the insertion after the definition of "prescribe" of the following definitions:

" **'price'** means a charge for electricity to an end-user or customer reflecting the cost to serve that end-user or customer and may include a tariff determined by the Regulator, and a surcharge, tax, levy or duty

imposed by a municipality in terms of section 229 of the Constitution of the Republic of South Africa, 1996;

'Promotion of Administrative Justice Act' means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);";

(c) by the deletion of the definition of "price"; and

(d) by the insertion after the definition of "tariff" of the following definition:

" 'tariff application' means an application contemplated in section 14A;".

Insertion of section 14A in Act 4 of 2006

2. The following section is hereby inserted in the principal Act after section 14:

"Tariff applications

14A. (1) A licensee must submit a tariff application to the Regulator, in the prescribed manner, for the setting or approval of a tariff.

(2) (a) Every tariff application must be accompanied by a cost of supply study, which must be undertaken and compiled by a licensee in the prescribed manner.

(b) The Regulator may not consider a tariff application that is not accompanied by a cost of supply study.

(3) (a) The Regulator must, upon receipt of a tariff application, publish the application and the accompanying cost of supply study for public comment in accordance with section 4 of the Promotion of Administrative Justice Act.

(b) The Regulator must, in the prescribed manner, determine whether a tariff application is consistent with the accompanying cost of supply study and must further assess and verify the contents of the cost of supply study.

(4) (a) The Regulator may, after considering a tariff application and any public comments received in terms of subsection (3)(a), approve the application, subject to any amendments or conditions it may deem necessary, or reject the application in whole or in part.

(b) A tariff set or approved by the Regulator may not—
(i) be implemented in a financial year that has already commenced;
and
(ii) have any retroactive or retrospective effect.

(5) A tariff set or approved by the Regulator may only be corrected, varied, or set aside, by a competent court upon an application for the judicial review of the tariff in terms of the Promotion of Administrative Justice Act."

Amendment of section 35 of Act 4 of 2006, as amended by section 1 of Act 28 of 2007 and section 1 of Act 38 of 2024

3. Section 35 of the principal Act is hereby amended by the insertion after subsection (3A) of the following subsection:

"(3B) The Regulator must, after consultation with the Minister, make rules regarding tariff applications and cost of supply studies."

Amendment of arrangement of sections of Act 6 of 1999

4. The arrangement of sections of the principal Act is hereby amended by the insertion after the item relating to section 14 of the following item:

"14A. Tariff applications".

Short title and commencement

5. This Act is called the Electricity Regulation Amendment Act, 2026, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ELECTRICITY REGULATION AMENDMENT BILL, 2026

1. INTRODUCTION

The Electricity Regulation Amendment Bill, 2026 ("Bill") seeks to amend the Electricity Regulation Act, 2006 (Act No. 4 of 2006) ("principal Act").

2. OBJECTIVES OF BILL

2.1 The Bill seeks to close the accountability gaps that have allowed the National Energy Regulator ("NERSA") to preside over R54.7 billion in calculation errors without consequence. The Bill codifies the principle of finality, regarding tariffs set or approved by NERSA, to ensure that any calculation error is not passed on to the South African consumer.

2.2 In accordance with the High Court judgment of *Afriforum v NERSA & Others*¹ ("*Afriforum* judgment"), the Bill provides that any error made in respect of the setting or approval of a tariff may only be corrected, varied, or set aside by judicial review. The aforesaid will therefore end the practice of labelling multi-billion rand calculation errors as "clerical errors" in order to avoid public scrutiny.

¹ North Gauteng High Court, Pretoria [2025] ZAGPPHC 1176.

- 2.3 Furthermore, the Bill ensures that a tariff set or approved by NERSA may not be implemented in a financial year which has already commenced and must be applied prospectively in order to avoid back-dated retrospective “clawbacks” that ignore the *functus officio* doctrine.
- 2.4 In accordance with the *Afriforum* judgment, the Bill mandates that cost of supply studies must accompany all tariff applications submitted to NERSA in order to end the era of “benchmarking” and unsubstantiated municipal hikes that have left consumers facing potential retrospective or retroactive billing chaos.
- 2.5 In summary, the Bill is a direct intervention to restore the rule of law to energy regulation and to ensure that technical failure by the state does not continue to manifest as an assault of the wallets of ordinary citizens.

3. CONTENTS OF BILL

- 3.1 Clause 1 seeks to amend section 1 of the principal Act by inserting certain definitions.
- 3.2 Clause 2 seeks to insert section 14A in the principal Act which provides for the tariff application process which a licensee must comply with.
- 3.3 Clause 3 seeks to amend section 35 of the principal Act by making provision for NERSA to make rules regarding tariff applications and cost of supply studies.

3.4 Clause 4 seeks to amend the arrangement of sections of the principal Act.

3.5 Clause 5 provides for the short title and commencement.

4. DEPARTMENTS AND BODIES CONSULTED

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

6.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution of the Republic of South Africa, 1996 ("Constitution"), as the provisions of the Bill in substantial measure fall within a functional area of concurrent national and provincial legislative competence, as set out in Schedule 4 to the Constitution, namely "electricity".

6.2 The Member is of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019) ("Traditional and Khoi-San Leadership Act"), as the Bill does not contain any provisions which directly affect traditional or Khoi-San communities, or

provisions which pertain to customary law or customs of traditional or Khoi-San communities.