

Introduction

Electricity has become an integral part of daily life and it cannot be disputed that it has made daily living a little more efficient. Considering the current energy crisis and frequent power cuts in the form of “loadshedding”, is there a duty on government to provide free basic electricity to the people of South Africa? In this article, we look at various pieces of national legislation, national government plans and policies to determine whether such a duty exists.

The National Energy Act 34 of 2008

Section 2 of the National Energy Act (the NEA) states that its object, among others, is to ensure an uninterrupted supply of energy to the nation and facilitate energy access to improve the quality of life of the people of South Africa. The emphasis here, for the purpose of this article, is on access.

Section 5(1) of the NEA states that the Minister must adopt measures that provide for universal access to appropriate forms of energy, or energy services, to the citizens of South Africa at affordable prices. Section 5(2) states that the access referred to in section 5(1) is subject to, amongst other things, the *availability of energy resources* and whether the authority in question can afford such resources.

Section 6 provides that the Minister must develop and, on an annual basis, review and publish the Integrated Energy Plan (IEP) in the Gazette. The IEP must deal with issues relating to the supply, storage of and demand for energy in a way that accounts for economically available energy resources, universal accessibility and free basic electricity. Essentially, this means that the government needs to develop ways to increase access to energy and, if possible, access to free electricity. We now turn to the IEP and other legislation to see if they create a duty on government to supply free basic electricity.

The Draft 2012 Integrated Energy Planning Report: Executive Summary (IEPR)

One of the IEPR’s objectives is a plan to increase access to energy and it states “energy access is now widely recognised as a prerequisite for human development.” It is noteworthy that access to energy, as has been cited by the NEA, is said to be a function of *availability and affordability*. In

effect, access to energy is something that is progressively realised and the supply thereof is subject to the availability of resources in order to be facilitated. This means that if resources such as money, infrastructure or even physical resources such as coal are not available, then access to energy and free basic electricity cannot be provided to the people in areas affected by scarce resources.

The Municipal Systems Act 32 of 2000 (MSA)

There is, therefore, no law placing a duty on national or provincial government to provide free basic electricity. But what about local government? Section 73(1)(a) of the MSA states that a municipality must give effect to the provisions of the Constitution and give priority to the basic needs of the local community. It also states that municipal services must be provided in a manner that is conducive to the prudent, economic, efficient and effective use of *available* resources (sec 73(2)(b)(i)). Therefore, just as at a national and provincial level, if electricity is not available or there is no budget to pay for it, there too can be no free basic electricity provided to the people in affected areas.

The Electricity Basic Services Support Tariff (Free Basic Electricity) Policy of 2003

The Free Basic Electricity Policy of 2003 states that certain groups of people who meet specific criteria qualify for the allocation of free basic electricity, which is limited to a maximum of 60kWh per household, per month and anything over this limit will be charged to the customer. There are two possible methods of assessing who qualifies for free electricity: (1) that the 'poor households' apply for a current-limited electricity supply which makes them eligible for a free basic electricity allocation; or (2) that the responsible electricity Service Provider identifies households consuming, on average, less than a pre-determined amount of electricity per month and then automatically applies the free basic electricity allocation. Essentially, free basic electricity should be provided but only by municipalities that can afford it and have adequate resources to supply it. Thus, the responsibility on local government is to provide access to electricity and not necessarily to provide free electricity unless it can afford to.

Conclusion

According to national and municipal legislation, despite acknowledging that electricity is important for survival, citizens have no absolute right to electricity but rather a right to access to electricity. This can only be realised progressively as and when there are resources available to provide for the allocation of electricity. Furthermore, even when a local government authority can afford to provide free electricity, only certain groups qualify for such allocation. The provision of free electricity can only happen when local government determines that there is enough electricity available and it has the resources to put this provision in place. In the meantime, as government tries to fulfil its duties under section 6 of the NEA and IEPR, and in light of the energy crisis currently facing Eskom and the proposed tariff increase in electricity prices, people will continue to have to pay for their electricity usage.

Co-Author

Musa Mathebula

Candidate Attorney at Schindlers Attorneys

Phone: +27 (0) 11 448 9646

Mathebula@schindlers.co.za

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