'ES1'
T19 186
124

ORIGINAL

MD 30
1995
1904

ELECTRICITY SUPPLY AGREEMENT

between

ESKOM

and

EMALAHLENI LOCAL MUNICIPAL COUNCIL

1

187

125

TABLE OF CONTENTS

		PAGE
	SECTION A : GENERAL	
1.	Parties	1
2.	Introduction	1
3.	General Agreement	2
4.	Interpretation and Definitions	2
5.	Annexures	2
6.	Period of Agreement	3
	SECTION B : FINANCIAL	
7.	Prices for Electricity	3
8.	Capital Expenditure : Monthly Rental	4
9.	Payment of Electricity Accounts	6
10.	Security - Electricity Accounts	7
11.	Irrecoverable Expenditure and Costs: Guaranteed Contribution	7
12.	Amendment of Terms – Additional Capital Expenditure	8
	SECTION C : TECHNICAL	
13.	Notified Maximum Demand and Notification of Additional Demands	9
14.	Point of Delivery	10
15.	Form and Quality of Electricity to be Supplied	10
16.	Power Factor	12
17.	Accommodation for Eskom's Equipment	12
18.	Equipment and Apparatus to be Supplied by Eskom	13
19.	Apparatus to be Provided by Distributor	13
20.	Measurement of Supply	14
21.	Testing of Meters / Metering Installations	15
	SECTION D : LEGAL	
221.	Entire Agreement and Variation / Breach of Terms and Conditions	16
23.	Cession of Agreement	17
24.	Right(s)-of-Way	17
25.	Notices / Addresses	19
	ANNEXURES	
	Annexure 'A' – Megaflex Prices - 2001	
	Annexure 'B' – Quality of Supply Specification	

188

126

ESKOM

ELECTRICITY SUPPLY AGREEMENT

[Megaflex and Benefit of Diversity]

SECTION A: GENERAL

1. PARTIES

The parties to this Agreement are -

ESKOM

herein represented by PHIRWA JACOB MAROGA in his capacity as EXECUTIVE DIRECTOR (DISTRIBUTION)

- AND -

EMALAHLENI LOCAL MUNICIPAL COUNCIL

('the DISTRIBUTOR' and previously known as The Town Council of Witbank)

herein represented by ~~GERHARDUS JOHANNES UITENWEERDE MULLER ROTHMAN~~ JOHANNES JACOBS JACOBS in his capacity as ~~ACTING DIRECTOR EXECUTIVE CORPORATE SERVICES~~ DEPUTY CITY SECRETARY

2. INTRODUCTION

It is recorded that -

2.1 ESKOM is presently supplying the DISTRIBUTOR, in terms of an existing electricity supply agreement, concluded between ESKOM and the Town Council of Witbank, dated 24 July 1985 (Ref. No. ETR 54/85), with electricity in bulk for municipal purposes and for the purpose of distribution to consumers within the DISTRIBUTOR's licensed area of supply.

© ESKOM

2.2 The DISTRIBUTOR has elected to be charged at the Megaflex prices as set out in ESKOM's Schedule of Standard Prices and has also applied to ESKOM for an increased 60 MVA (sixty megavolt amperes) point of supply of electricity at ESKOM's Churchill substation.

2.3 The DISTRIBUTOR and ESKOM have agreed that the said supply agreement dated as in subclause 2.1 above, shall be terminated and replaced by this Agreement on the date of signing hereof.

3. GENERAL AGREEMENT

ESKOM agrees to supply to the DISTRIBUTOR and the DISTRIBUTOR agrees to take from ESKOM all the electricity required by the DISTRIBUTOR for its distribution system, on the terms and conditions set out in this Agreement; subject to the provisions of the Eskom Act, 1987 (Act No. 40 of 1987) and the Electricity Act, 1987 (Act No. 41 of 1987) and the Rules and Regulations issued thereunder (hereinafter referred to as 'the Act' and the 'Electricity Act' respectively), and of the parties distribution licences and ESKOM's Schedule of Standard Prices, as amended or re-enacted from time to time.

4. INTERPRETATION AND DEFINITIONS

Unless inconsistent with the context the words and expressions used in this Agreement shall have the same meanings as those assigned to them in the Act, the Electricity Act, the Eskom Distribution Licence and the Eskom Schedule of Standard Prices and the Rationalised User Specification for Quality of Supply ('NRS 048') issued by the South African Bureau of Standards.

5. ANNEXURES

The following annexures referred to in this Agreement shall be deemed to be incorporated herein and to form an indivisible part hereof.

Annexure A - Megaflex Price List

Annexure B - Quality of Supply Specification

© ESKOM

6. PERIOD OF AGREEMENT

128

This Agreement shall come into force on the date of signing hereof and shall endure for an indefinite period, subject to the provisions of this Agreement and the right of either party to terminate this Agreement by giving the other party 12 (twelve) calendar months' notice in writing.

SECTION B: FINANCIAL

7. PRICES FOR ELECTRICITY

7.1 The prices payable by the DISTRIBUTOR for electricity supplied or made available under this Agreement, shall be the Megaflex prices as prescribed in the Eskom Schedule of Standard Prices, subject however to ESKOM's right to adjust the prices it charges for electricity supplied in accordance with the provisions of the Electricity Act and with the approval of the National Electricity Regulator.

Particulars of the Megaflex prices currently in force are set out in Annexure 'A'.

Diversity audit 13 Jan 2004

7.2 ESKOM agrees to grant the DISTRIBUTOR the benefit of diversity between the maximum demands measured by ESKOM at each of the points of delivery referred to in Clause 14 on condition that:

7.2.1 The DISTRIBUTOR complies with the provisions of ESKOM's policy document, titled 'Granting the Benefit of Diversity' (Ref No ESKADAATO), as amended with the approval of the National Electricity Regulator.

7.2.2 ESKOM shall notify the DISTRIBUTOR in the event of non-compliance with the criteria as set out in ESKOM's policy document as referred to in subclause 7.2.1 above. Should the CUSTOMER fail to comply with the said criteria within 14 (fourteen) days after receiving such notification ESKOM shall withdraw the benefit of diversity until such time that ESKOM is satisfied that the CUSTOMER complies with the said criteria.

© ESKOM

7.3 The calculation of the maximum demand charge referred to in the Megaflex prices as set out in ESKOM's Schedule of Standard Prices shall accordingly, for as long as the benefit of diversity is granted to the DISTRIBUTOR, be based on the maximum simultaneous demand registered during peak and standard periods in the month at the said points of delivery, subject to the proviso that the reactive energy charge referred to in the Megaflex prices as set out in the aforementioned Schedule, shall be calculated separately for each point of delivery.

For the purpose of this subclause, 'maximum simultaneous demand' shall mean the highest simultaneous load, measured in kilowatts, supplied in any demand integrating period of 30 (thirty) consecutive minutes in the month, arithmetically summated over the said points of delivery.

7.4 If additional points of delivery are made in terms of this Agreement, such additional supplies shall be subject to the express condition that the demand charge for each additional point of delivery, shall be based on the maximum demand supplied at that particular point of delivery. The diversity between the monthly maximum demands at such additional points of delivery and the existing points of delivery shall accordingly not be taken into account in determining the DISTRIBUTOR's liability unless otherwise agreed to by ESKOM.

8. CAPITAL EXPENDITURE: MONTHLY RENTAL

8.1 The DISTRIBUTOR shall pay to ESKOM in respect of the capital expenditure and costs incurred and/or to be incurred by ESKOM in making this bulk supply of electricity available to the DISTRIBUTOR, at the points of delivery referred to in Clause 14, the monthly amounts as set out in subclause 8.2 (hereinafter referred to as 'the monthly rental').

© ESKOM

8.2 The monthly rentals and the expiry dates are as follows:

Points of Delivery	Monthly Rental	Expiry Date
POD 1 – Churchill Substation	R8 192,00 (+ VAT @ 14% = R9 338,88)	15 September 2004
POD 2 – Doornpoort Substation	R23 540,00 (+ VAT @ 14% = R26 835,60)	15 September 2004
POD 3 – Churchill Substation	(i) R8 159,00 (+ VAT @ 14% = R9 301,26)	16 February 2010
	(ii) R2 774,00 (+ VAT @ 14% = R3 162,36)	5 (five) years from date of connection

8.3 The monthly rental (before the addition of VAT at the prescribed rate) shall be rebated, but not beyond extinction, in respect of each month during which electricity is taken by R2,00 (two rands) for each kilowatt of the actual maximum demand recorded during peak or standard periods in that month, or if the charges for that month are calculated according to the Megaflex prices as set out in ESKOM's Schedule of Standard Prices, by an amount calculated as the product of the total number of kWh of active energy supplied during peak periods in the month and the rate of 1,81c (one comma eight one cents) per kWh.

8.4 The monthly rental or the net amount thereof, if any, as determined above, shall be payable:

8.4.1 until the expiry dates as specified in subclause 8.2, subject to this Agreement remaining in force, and if the monthly rental is increased at any time as is provided for in Clause 12, the amount by which the monthly rental is increased shall be payable until such date as is agreed between the parties, or until the supply is terminated, whichever date is the earlier; and

8.4.2 monthly, whether any electricity is taken in any month or not, at the same time as the prices payable under Clause 7.

© ESKOM

9. PAYMENT OF ELECTRICITY ACCOUNTS

9.1 Electricity accounts for all charges payable under this Agreement shall be sent to the DISTRIBUTOR as soon as possible after the end of each month (i.e. meter-reading month, as per the definition of 'month' in the Eskom Schedule of Standard Prices), and each account shall be due and payable on the date the account is received by the DISTRIBUTOR, which date, for purposes of this Agreement, shall be as set out in subclause 25.2.

9.2 Should payment not be received within a period of 10 (ten) days from the date the account is deemed to have become due and payable in terms of subclause 9.1, ESKOM may discontinue the bulk supply to the DISTRIBUTOR and/ or terminate the electricity supply agreement after having given the DISTRIBUTOR 14 (fourteen) days written notice. The amount outstanding shall bear interest compounded monthly from the due date to date of payment, at a rate per annum equal to the prevailing prime overdraft rate charged by First National Bank of Southern Africa Limited plus 5% (five per centum).

9.3 Should the DISTRIBUTOR dispute an account, it shall not be entitled to reduce or set off its debt or defer payment thereof beyond the period allowed for in subclause 9.2; but the account shall be settled in full pending resolution of such dispute. If a manifest error is however evident, the DISTRIBUTOR shall be entitled to pay in lieu of the amount claimed an amount equal to the average of the accounts rendered for the preceding three consecutive months.

9.4 Should the DISTRIBUTOR be incorrectly charged for any amount(s) payable in terms of the electricity supply agreement as a result of human error, ESKOM shall inform the DISTRIBUTOR of the correct amount(s) payable and the reasons therefor.

In the case of the DISTRIBUTOR being overcharged, ESKOM shall as soon as practicable either credit the DISTRIBUTOR's electricity account or reimburse the DISTRIBUTOR with the total amount overcharged. The said amount shall include interest, compounded monthly from the date that the

© ESKOM

to dismantle its equipment on termination of the supply, be put to certain expenditure and costs in excess of the value of the recoverable assets. To compensate ESKOM for such expenditure and costs it is agreed as follows:

11.1 In the event of the supply to the distribution system being discontinued the DISTRIBUTOR shall pay to ESKOM a contribution towards the said irrecoverable expenditure and costs which ESKOM would incur.

11.2 The DISTRIBUTOR's contingent liability shall not exceed the sum of R43 000,00 (forty-three thousand rands) (hereinafter referred to as 'the Guaranteed Contribution').

11.3 Subject to the DISTRIBUTOR meeting its obligations under this Agreement, the Guaranteed Contribution shall be reduced for and in respect of each completed year during which this Agreement remains in force from and including the fourth year until and including the thirteenth year, calculated from the date electricity is first supplied to the DISTIBUTOR in terms hereof, by 1/10th (one-tenth) of the Guaranteed Contribution.

11.4 If within the period of 13 (thirteen) years referred to in subclause 11.3, this Agreement is terminated by ESKOM for breach of contract by the DISTRIBUTOR or is terminated by the DISTRIBUTOR for any reason, the amount of the Guaranteed Contribution or the reduced amount thereof shall be due and payable by the CUSTOMER to ESKOM.

12. AMENDMENT OF TERMS - ADDITIONAL CAPITAL EXPENDITURE

In the event of the DISTRIBUTOR requiring ESKOM to provide an increased bulk supply in accordance with the provisions of Clause 13, such variation in the bulk supply shall be subject to such terms and conditions as agreed between the parties and confirmed in writing in accordance with subclause 22.2; failing such agreement, no increased bulk supply shall be provided by ESKOM. Any resultant adjustment of the amounts referred to in Clause 8, shall take account not only of the additional capital expenditure incurred or to be incurred by ESKOM in increasing the DISTRIBUTOR's bulk supply but also the additional capacity of ESKOM's distribution system made available and/or reserved to meet the DISTRIBUTOR's increased demand.

© ESKOM

13. NOTIFIED MAXIMUM DEMAND AND NOTIFICATION OF ADDITIONAL DEMANDS

13.1 ESKOM's obligation shall be to make available and supply to the DISTRIBUTOR a supply of electricity up to the maximum capacity represented by the notified maximum demand of the DISTRIBUTOR, as increased from time to time by the additional demands of the DISTRIBUTOR, notified to and accepted by ESKOM in accordance with the provisions of subclause 13.3.

13.2 The notified maximum demands of the DISTRIBUTOR at the date of this Agreement is as follows:

Witbank DIS

Points of Delivery	Notified Maximum Demands
POD 1 – ~~Churchill~~ Substation	35 MVA (thirty-five megavolt amperes)
POD 2 – Doornpoort Substation	30 MVA (thirty megavolt amperes)
POD 3 – Churchill Substation	60 MVA (sixty megavolt amperes)

13.3 The DISTRIBUTOR undertakes to notify ESKOM in writing each year of the notified maximum demand (in both peak and standard periods) for three succeeding years. Should the DISTRIBUTOR however at any time require an increased bulk supply from ESKOM (over and above the notified maximum demand in force from time to time), it shall give adequate notice in writing to ESKOM of the increased demands which it requires ESKOM to supply and the date(s) at which such increased demand(s) is/are required.

Any variation in the DISTRIBUTOR's notified maximum demand shall be dealt with in accordance with the procedure set out in the definition of 'notified maximum demand' in the Eskom Schedule of Standard Prices and the provisions of Clause 12.

© ESKOM

14. POINTS OF DELIVERY

The electricity supplied by ESKOM shall be delivered to the DISTRIBUTOR at the following points of delivery and at such additional points of delivery as may from time to time be mutually agreed between the parties:

WTB DS

Points of Delivery	Points of Connection
POD 1 ~~Churchill~~ Substation	22kV line isolators
POD 2 – Doornpoort Substation	22kV line isolators
POD 3 – Churchill Substation	132kV line isolators

15. FORM AND QUALITY OF ELECTRICITY TO BE SUPPLIED

15.1 Electricity shall be supplied as three-phase alternating current at a nominal frequency of 50Hz (fifty hertz), subject to Regulation 9(3) of the Electricity Act, and at the following declared voltages:

WTB DS

Points of Delivery	Declared Voltages
POD 1 ~~Churchill~~ Substation	22kV (twenty-two kilovolts)
POD 2 – Doornpoort Substation	22kV (twenty-two kilovolts)
POD 3 – Churchill Substation	132kV (one hundred and thirty-two kilovolts)

15.2 ESKOM shall furnish the DISTRIBUTOR with a reliable and continuous supply of electricity in bulk. However, it is not practicable for ESKOM to guarantee that the continuity and voltage quality of the bulk supply will always be maintained under all contingencies. It is therefore incumbent on the DISTRIBUTOR to ascertain from ESKOM the nature of the protection provided on the bulk supply and the DISTRIBUTOR shall take adequate measures to protect its business and distribution system against any losses and/or damage arising from supply interruptions/ supply reductions or voltage distortions in the supply to its distribution system.

Is this FIRM

© ESKOM

15.2.1 Continuity or Reduction of Supply

(a) ESKOM shall have the right, for purposes of the efficient operation and extension of ESKOM's distribution and/or transmission systems and also in emergencies, to temporarily interrupt the bulk supply to the DISTRIBUTOR, subject to any limits prescribed in NRS 048.

(b) ESKOM prescribes to the interruption standards placed on utilities by NRS 048. ESKOM undertakes in the context of this Agreement to manage the interruptions to the DISTRIBUTOR in accordance with these requirements.

(c) ESKOM shall give the DISTRIBUTOR not less than 14 (fourteen) days' written notice of any planned interruptions.

(d) ESKOM and the DISTRIBUTOR shall collaborate in determining the portion of the DISTRIBUTOR's load which it will reduce through ESKOM's Load Curtailment and/ or Manual Load-shedding and/or Under-frequency Load-shedding schemes, or by other agreed means, if ESKOM should experience a shortage of generating and/or transmission capacity.

15.2.2 Voltage Quality

Details of the parties' obligations in respect of the voltage quality aspects of the supply, are specified in Sections B.1.1, C.1.2, C.1.3 and C.1.4 and C.1.5 of Annexure 'B'.

15.3 ESKOM shall not be liable for damages, expenses or costs caused to the DISTRIBUTOR from any reduction of or interruption in the bulk supply, or any variation of voltage or frequency, or any failure to supply electricity, unless the said reduction, interruption, variation or failure is due to the negligence of ESKOM.

© ESKOM

In the event that ESKOM should be liable for damage caused to the DISTRIBUTOR as a result of any such reduction in load or any interruption in the bulk supply, or any variation of voltage or frequency or any failure to supply electricity, such liability shall be limited to direct damage excluding consequential damages. Consequential damages include, but are not limited to, loss of production and loss of profit.

16. POWER FACTOR

The power factor at each point of delivery shall under all loading conditions not be leading, unless otherwise agreed to by ESKOM.

The power factor of the load at each of the points of delivery shall not be less than 0,85 (nought comma eight five) lagging. Should the power factor be less than 0,85 (nought comma eight five), the DISTRIBUTOR shall be required to install at its own expense suitable apparatus to ensure that this requirement is complied with.

For purposes hereof 'power factor' is defined as the kWh divided by the kVAh (where the kVAh equals the square root of the sum of the kWh squared and the kvarh squared) measured over the same demand-integrating period.

17. ACCOMMODATION FOR ESKOM'S EQUIPMENT

17.1 The DISTRIBUTOR has provided and shall continue for the duration of this Agreement to provide and maintain in good order at its expense the site to be mutually agreed upon and such accommodation, including structures, as ESKOM may reasonably require for accommodating its equipment and apparatus.

The said accommodation has been and shall continue to be designed, situated and provided with suitable access thereto to the reasonable satisfaction of ESKOM for the purpose of erecting and/or connecting up, inspecting, operating and maintaining the equipment and apparatus of ESKOM therein.

© ESKOM

17.2 ESKOM shall have the right, after having given the DISTRIBUTOR prior written notice, to use the said accommodation in which its equipment and apparatus is installed for the purpose of supplying other consumers and, if necessary, to call upon the DISTRIBUTOR to extend the same for such purpose; but the cost of any extension of the said accommodation which is required solely for the purpose of supplying other consumers shall be for the account of ESKOM.

18. EQUIPMENT AND APPARATUS TO BE SUPPLIED BY ESKOM

18.1 All equipment and apparatus up to the points of supply at the points of delivery referred to in Clause 14 shall be provided, installed, operated and maintained by ESKOM.

18.2 The DISTRIBUTOR shall not, except in cases of emergency or at the request of or in terms of an authorisation from ESKOM, operate or interfere with the apparatus of ESKOM.

18.3 Notwithstanding any payments made by the DISTRIBUTOR to ESKOM in respect of the capital expenditure and costs incurred by ESKOM in making a bulk supply of electricity available to the DISTRIBUTOR, all material, equipment and apparatus erected or installed by ESKOM in pursuance of the electricity supply agreement shall be and remain the property of ESKOM.

ESKOM shall have the right to use such electrical equipment and apparatus for purposes of supplying other consumers, and also upon termination of the electricity supply agreement to enter upon the premises/property of the DISTRIBUTOR and remove therefrom all such material, equipment and apparatus.

19. APPARATUS TO BE PROVIDED BY DISTRIBUTOR

19.1 The DISTRIBUTOR shall, at its own expense, provide, erect, connect up, operate and maintain all circuits required to connect its electricity distribution system with the points of supply and all apparatus necessary for controlling such circuits to the reasonable satisfaction of ESKOM, including efficient

© ESKOM

apparatus and switchgear for the protection of the apparatus of ESKOM against overload, faults and lightning on the DISTRIBUTOR's distribution system. The protection settings of the DISTRIBUTOR's fault and overload equipment shall be agreed with ESKOM to ensure appropriate protection grading.

ESKOM shall be entitled to recover from the DISTRIBUTOR any direct loss or expenses incurred by ESKOM by reason of damage to ESKOM's plant and equipment or otherwise by reason of failure of the DISTRIBUTOR to comply with the provisions of this Clause.

19.2 The apparatus of the DISTRIBUTOR shall be of good design and construction, properly installed and maintained by the DISTRIBUTOR.

19.3 The DISTRIBUTOR shall not at any time load in excess of its rated capacity the transmission lines, equipment and apparatus provided by ESKOM, and ESKOM shall be entitled in the event of an overload occurring to interrupt the bulk supply.

20. MEASUREMENT OF SUPPLY

20.1 Metering equipment for measuring the electricity supplied by ESKOM to the DISTRIBUTOR shall be provided, installed and kept in repair by ESKOM.

20.2 The quantities of electrical energy and power supplied shall be measured and recorded by ESKOM and electricity accounts shall be rendered monthly on the basis of such measurements. The records of such measurements shall at all reasonable times be open for inspection by the DISTRIBUTOR or its authorised representative.

20.3 During any period when a meter/recorder has not registered or ESKOM's records show that the reading is unreliable due to the meter or any associated equipment being defective, a reasonable estimate shall be made by ESKOM of the correct quantity for each of the months in question and the account(s) for such period shall be based on such estimate; provided that where the DISTRIBUTOR has its own meters installed, ESKOM shall take

© ESKOM

account of the evidence provided by such meters in estimating the correct quantity/quantities.

20.4 As duplicate meters/recorders have been installed the average of the readings of the main and check meters/recorders shall be used for purposes of calculating the account. If the readings at any time differ by more than 2% (two per centum) from the average of the two readings, then for the purposes of rendering accounts, if ESKOM's records show that the discrepancy is attributable to one meter/recorder only, the reading of the other meter/recorder shall be taken but if the discrepancy may be due to the inaccuracy of both meters/recorders a reasonable estimate shall be made by ESKOM of the correct quantity. Such meters/recorders shall as soon as possible be tested and the account adjusted in accordance with the provisions of Clause 21 after the inaccuracy has been ascertained.

21. TESTING OF METERS / METERING INSTALLATIONS

21.1 ESKOM shall have the right to test the metering installation at any time and if any such test shows a meter/recorder inaccuracy exceeding 2% (two per centum) fast or slow or an overall metering installation inaccuracy exceeding 5% (five per centum), the same shall in the absence of evidence to the contrary be deemed to have existed since the second-last meter-reading date prior to the date of testing, and the account(s) shall be adjusted accordingly as soon as practicable after the inaccuracy has been ascertained.

21.2 If within 30 (thirty) days of the rendering of any monthly electricity account the DISTRIBUTOR requests ESKOM in writing to test the meter(s)/ recorder(s) and/or the metering installation(s), ESKOM shall do so on payment by the DISTRIBUTOR of the appropriate meter test fee(s) and/or the estimated cost that ESKOM would incur in testing the metering installation(s), and if such test shows a meter/recorder inaccuracy exceeding 2% (two per centum) or an overall metering installation inaccuracy exceeding 5% (five per centum), the same shall in the absence of evidence to the contrary be deemed to have existed since the commencement date of the month for which such account was rendered, and the account(s) shall be adjusted accordingly as soon as practicable after the inaccuracy has been ascertained, and the aforesaid fee(s) and/or costs paid in advance shall be refunded to the DISTRIBUTOR.

© ESKOM

If the test shows the inaccuracy to be less than 2% (two per centum) and/or 5% (five per centum) respectively, the account(s) shall stand as rendered and the aforesaid fee(s) and/or costs paid by the DISTRIBUTOR shall be forfeited to ESKOM.

SECTION D: LEGAL

22. ENTIRE AGREEMENT AND VARIATION / BREACH OF TERMS AND CONDITIONS

22.1 This Agreement constitutes the sole and entire agreement between the parties and supersedes all previous negotiations, arrangements or agreements in respect of the subject matter of this Agreement, other than separate agreements or documents relating to rights-of-way and/or servitudes.

22.2 Save as provided for in Clauses 7 and 10, no variation, modification or waiver of any provision of this Agreement, or consent to any departure therefrom, shall in any way be of any force or effect unless confirmed in writing and signed by the parties and then such variation, modification, waiver or consent shall be effective only in a specific instance and for the purpose and to the extent for which it was made or given. Furthermore, any failure, delay, relaxation or indulgence on the part of either party in enforcing any provision of this Agreement shall not be deemed or construed to be a waiver thereof.

22.3 Should the DISTRIBUTOR fail to pay any electricity account in accordance with the provisions of Clause 9, ESKOM may discontinue the bulk supply to the DISTRIBUTOR and/or terminate this Agreement, without prejudice to any claim ESKOM may have for electricity supplied or for damages suffered by the default on the part of the DISTRIBUTOR, subject to the proviso that ESKOM shall give the DISTRIBUTOR prior notice thereof by facsimile or some other electronic medium. ESKOM shall afford the DISTRIBUTOR a period of 48 (forty-eight) hours within which to rectify the said default. The bulk supply shall be restored as soon as practicable after the DISTRIBUTOR has remedied the default and paid the requisite reconnection fee.

22.4 Should the DISTRIBUTOR fail to comply fully with any of the conditions of this Agreement, other than the failure to pay any account in accordance with the provisions of Clause 9, ESKOM shall be entitled to give the DISTRIBUTOR notice of such default and if the DISTRIBUTOR fails to remedy the default within 14 (fourteen) days after receiving such notification, or if circumstances justify it such other period as may be agreed between the parties, ESKOM may forthwith discontinue the bulk supply to the DISTRIBUTOR and/or terminate this Agreement, without prejudice to any claim ESKOM may have for electricity supplied or for damages suffered by the default on the part of the DISTRIBUTOR; provided however that if the default is such that in the opinion of ESKOM it would be dangerous to continue the supply to the DISTRIBUTOR, ESKOM may discontinue the supply without the prior notification aforesaid. ESKOM shall however forthwith inform the DISTRIBUTOR of its reasons for discontinuing the supply. The supply shall be restored as soon as practicable after the DISTRIBUTOR has remedied the default and paid the requisite reconnection fee.

23. CESSION OF AGREEMENT

23.1 Neither party shall be entitled to cede and/ or delegate this Agreement or any of its rights and obligations thereto, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

23.2 Notwithstanding anything to the contrary contained in subclause 23.1, it is agreed that ESKOM may cede its rights or delegate its obligations and liabilities in terms of this Agreement to any entity that is created as a result of the restructuring of either ESKOM and/ or the Electricity Supply Industry (ESI) in South Africa.

24. RIGHT(S)-OF-WAY

24.1 The DISTRIBUTOR shall grant to ESKOM free of charge right(s)-of-way in perpetuity over property owned by the DISTRIBUTOR, along a route or routes to be agreed, for (a) the overhead electric power line(s) and/or underground electric cable(s) which ESKOM requires to erect, lay or install in connection with the bulk supply of electricity to the DISTRIBUTOR and (b) any extension(s) of such line(s) and/or cable(s) to other consumers of ESKOM. The right(s)-of-way under (a) may be used by ESKOM to supply

© ESKOM

other consumers of ESKOM, as long as it does not disadvantage the DISTRIBUTOR.

Furthermore, the DISTRIBUTOR shall undertake to assist ESKOM in acquiring right(s)-of-way over any ground or immovable property within the DISTRIBUTOR's licensed area of supply as may be required by ESKOM in connection with the bulk supply of electricity to the DISTRIBUTOR.

24.2 Should ESKOM so desire the said rights may be registered as notarial servitudes against the title deeds of the DISTRIBUTOR's property. The DISTRIBUTOR undertakes that after the granting of any such rights to ESKOM, any sale or alienation of the said property by the DISTRIBUTOR before the registration of the said rights shall be made subject to ESKOM's right to secure registration of such servitudes. The DISTRIBUTOR shall give written notice, receipt acknowledged, to any person who wishes to acquire the said property, of the said rights in perpetuity referred to in subclause 24.1 and it shall provide ESKOM with the original notice and acknowledgement of receipt. If the DISTRIBUTOR fails to comply with the provisions of this subclause, it shall be liable to ESKOM for all costs that ESKOM may incur if the person acquiring the property instructs ESKOM to move the overhead lines or underground cables as set out in subclause 24.3. The costs shall be paid within 7 (seven) days of written demand from ESKOM, failing which interest will be payable on the outstanding amount in terms of subclause 9.2.

24.3 The said rights shall include provisions for access at all reasonable times to enable ESKOM to operate, maintain, repair, remove or replace any or all of the equipment of ESKOM.

24.4 All legal expenses in connection with the execution and registration of the said rights shall be borne by ESKOM.

24.5 If the DISTRIBUTOR should require ESKOM to change the route of any overhead electric power lines and/or underground electric cables across its property or the position of ESKOM's equipment or meters, the cost to be incurred by ESKOM in effecting the change or removal shall be borne, and paid in advance, by the DISTRIBUTOR.

© ESKOM

25. NOTICES / ADDRESSES

143

25.1 Any notice, notification, request, demand or other communication for any purpose under this Agreement shall be in writing addressed -

in the case of the DISTRIBUTOR as follows :

P O Box 3
WITBANK
1035

marked for the attention of the Acting City Secretary;

and in the case of ESKOM as follows :

P O Box 223
WITBANK
1035

marked for the attention of the Regional Customer Executive;

or to such other addresses, or for the attention of such other persons or department, as ESKOM and the DISTRIBUTOR may from time to time notify to each other.

25.2 All notices, notifications, requests, demands or other communications including accounts, shall be deemed to have reached the other party -

25.2.1 if delivered by hand, on the date of delivery;

25.2.2 if posted by ordinary mail or registered post, on the fifth calendar day following the date of such posting, and in the case of an account on the fifth calendar day following the date of the account;

25.2.3 if transmitted by facsimile or any other electronic medium acceptable to both parties, on the first business day following the date of despatch.

© ESKOM

25.3 For the purpose of this Agreement the DISTRIBUTOR's *domicilium citandi et executandi* shall be:

Civic Centre
President Avenue
WITBANK

and ESKOM's *domicilium citandi et executandi* shall be:

Megawatt Park
Maxwell Drive
Sunninghill Ext. 3
2199 SANDTON

Either party may, by written notice to the other, change its abovementioned *domicilium*.

© ESKOM

SIGNED for and on behalf of the **DISTRIBUTOR** on 28 August 2001

~~G J U M Bothman~~ J. J. Jacobs

As Witnesses:

1. _____

2. _____

SIGNED ~~for and on behalf of~~ **ESKOM** on 18 September 2001

P J Maroga

As Witnesses:

1. _____

2. _____

© ESKOM

ANNEXURE 'B'

ADDENDUM TO ELECTRICITY SUPPLY AGREEMENT

QUALITY OF SUPPLY SPECIFICATION

A. POINTS OF COMMON COUPLING

The points of common coupling under normal operating conditions shall be as described in Table 1 of this Annexure.

B. ESKOM'S OBLIGATIONS

1.1 VOLTAGE QUALITY

1.1.1 ESKOM shall maintain the voltage harmonics, voltage unbalance, and voltage flicker at the points of delivery in compliance with the limits specified in Part 2 of NRS 048, as revised from time to time.

1.1.2 In the event of the voltage quality limits referred to in Section B.1.1.1 being exceeded, ESKOM shall take appropriate measures to rectify the voltage quality as soon as is practicable. ESKOM shall inform the DISTRIBUTOR of the remedial action it intends taking and when the situation is expected to be normalised.

1.1.3 ESKOM shall at its own cost take the necessary remedial action when the sum of consumer interaction at the points of common coupling (described in Table 1 of this Annexure) exceeds the voltage quality limits referred to in Section B.1.1.1, provided that all consumers connected to the points of common coupling are within their individually allocated apportionment.

© ESKOM

1.1.4 With reference to Regulation 9(2)(b) of the Electricity Act, it is a specific condition of supply that the maximum percentage by which the supply voltage may differ from the declared voltage for a period longer than ten consecutive minutes, shall be 7,5% (seven comma five per centum) above or below the declared voltage. The voltage levels shall be assessed according to part 2 of NRS048.

C. THE DISTRIBUTOR'S OBLIGATION

The DISTRIBUTOR shall so use the bulk supply as not to interfere with an efficient and economical supply to other consumers of ESKOM, and shall ensure that any voltage distortions caused by the DISTRIBUTOR's load or equipment or that of its end-users, shall not at any time exceed the limits specified in Section C.1.2, C.1.3 and C.1.4 [the prescribed limits having been determined in accordance with NRS 048].

1.1 FAULT LEVELS AND NOTIFIED MAXIMUM DEMANDS

The voltage quality limits specified in Sections C.1.2, C.1.3 and C.1.4 are based on the fixed values as specified in Table 1 of this Annexure.

1.2 HARMONIC VOLTAGE EMISSIONS

The maximum permissible harmonic voltage emission levels at the points of common coupling shall be as specified in Table 2 of this Annexure. All other harmonics must be in accordance with the voltage harmonic limits as specified in Part 2 of the NRS 048.

1.3 VOLTAGE FLICKER

The maximum permissible contribution to flicker by the DISTRIBUTOR at the points of common coupling shall be as specified in Table 3 of this Annexure.

© ESKOM

1.4 VOLTAGE UNBALANCE

The maximum permissible contribution to voltage unbalance by the DISTRIBUTOR at the points of common coupling shall be as specified in Table 4 of this Annexure.

1.5 RAPID VOLTAGE CHANGES

The DISTRIBUTOR shall ensure that rapid voltage changes [as described in chapter 9 of IEC – 1000-3-7] originating from its load or equipment due to the starting of large loads or the switching of equipment, as recorded by ESKOM at the points of common coupling, shall not exceed the following emission limits:

Number of changes per hour *r*	Percentage Change in the Voltage	
r<1	4	3
1<*r*<=10	3	2,5
10<*r*<=100	2	1,5
100<*r*<1000	1,25	1

1.6 REMEDIAL ACTION AND NOTICE OF EXTENSIONS

1.6.1 Should any one of the voltage quality limits specified in Sections C.1.2, C.1.3, C.1.4 and C.1.5 be exceeded, the DISTRIBUTOR shall be required to implement such operational measures or at its own expense install corrective equipment as may be necessary to reduce the voltage distortion caused by the DISTRIBUTOR's load or equipment or that of its end-users to within the specified limits.

1.6.2 ESKOM shall monitor the harmonic voltage emissions, the voltage flicker and voltage unbalance, in accordance with the provisions of Section D of this Annexure, to ensure that the limits as specified herein are not exceeded and shall in the event of an infringement

© ESKOM

inform the DISTRIBUTOR thereof by facsimile in order that remedial action may be taken by the DISTRIBUTOR without delay.

Remedial action shall be taken by the DISTRIBUTOR immediately after being informed that an infringement has occurred, or where circumstances justify it within a period of time as may be agreed between the parties. If agreement on the period to be allowed for the DISTRIBUTOR to correct any infringement of the specified limits cannot be reached within 30 (thirty) days of the infringement occurring, the period shall finally be determined by the National Electricity Regulator.

1.6.3 The DISTRIBUTOR shall give adequate notice in writing to ESKOM of the installation of power factor correction equipment connected to the DISTRIBUTOR's distribution system at a voltage of 11kV (eleven kilovolts) and above and/or any other changes which may impact the power quality or impedance at the points of common coupling to the ESKOM system to enable countermeasures to be taken timeously.

D. MEASUREMENT/ VARIATION OF QUALITY OF SUPPLY

1.1 ESKOM shall monitor the quality of supply (continuity, harmonic current injection, the voltage flicker, voltage unbalance and voltage regulation) at the points of common coupling and ESKOM and the DISTRIBUTOR shall collaborate in drawing up appropriate operational procedures to facilitate the monitoring and reporting of the quality of supply. ESKOM shall install appropriate metering equipment at the said points of common coupling for this purpose.

1.2 ESKOM shall measure the power quality in accordance with the requirements specified in Part 3 of NRS048 and shall apply the relevant assessment method prescribed in Part 2 of NRS048 to the measured quantities.

1.3 The limits specified in Sections C.1.2, C.1.3 and C.1.4 may be revised if any of the fixed values in Section C.1.1 change.

© ESKOM

TABLE 1: POINTS OF COMMON COUPLING UNDER NORMAL OPERATING CONDITIONS (Section A) AND FIXED VALUES (Section C.1.1)

Points of Delivery	Points of Common Coupling (PCC)	Fault level (MVA) at the PCC	Notified Maximum Demands (MVA)
POD 1 – Churchill Substation	22kV line isolators at Churchill substation	438 MVA	35 MVA
POD 2 – Doornpoort Substation	22kV line isolators at Doornpoort substation	454 MVA	30 MVA
POD 3 – Churchill Substation	132kV line isolators at Churchill substation	2 789 MVA	60 MVA

TABLE 2: HARMONIC VOLTAGE EMISSIONS (Section C.1.2)

Harmonic Order	Voltage (%) at each point of common coupling		
	22kV Churchill	22kV Doornpoort	132kV Churchill
2	1,53	1,73	0,47
3	2,63	3,38	0,15
4	0,76	0,87	0,32
5	3,13	4,03	0,14
7	2,71	3,49	0,17
9	1,15	1,30	0,32
11	2,30	2,76	0,26
13	1,96	2,34	0,26
23	1,15	1,30	0,22
25	1,15	1,30	0,22

TABLE 3 FLICKER (Section C.1.3)

Points of Common Coupling	Short term flicker (Pst)	Long term flicker (Plt)
22kV Churchill	0,66	0,53
22kV Doornpoort	0,72	0,57
132kV Churchill	0,37	0,29

TABLE 4 VOLTAGE UNBALANCE (Section C.1.4)

Points of Common Coupling	Percentage voltage unbalance
22kV Churchill	1,22
22kV Doornpoort	1,39
132kV Churchill	0,51

© ESKOM