

AMEU:
Legal Framework and Wheeling of Electricity

7 November 2019

Agenda

- Legal Framework
 - Contractual parties to a wheeling transaction
 - Municipal obligations for wheeling agreements
- Wheeling tariff construction
 - Legislative Framework around Tariff Construction
 - Base Tariffs vs. Surcharges

Legal Framework

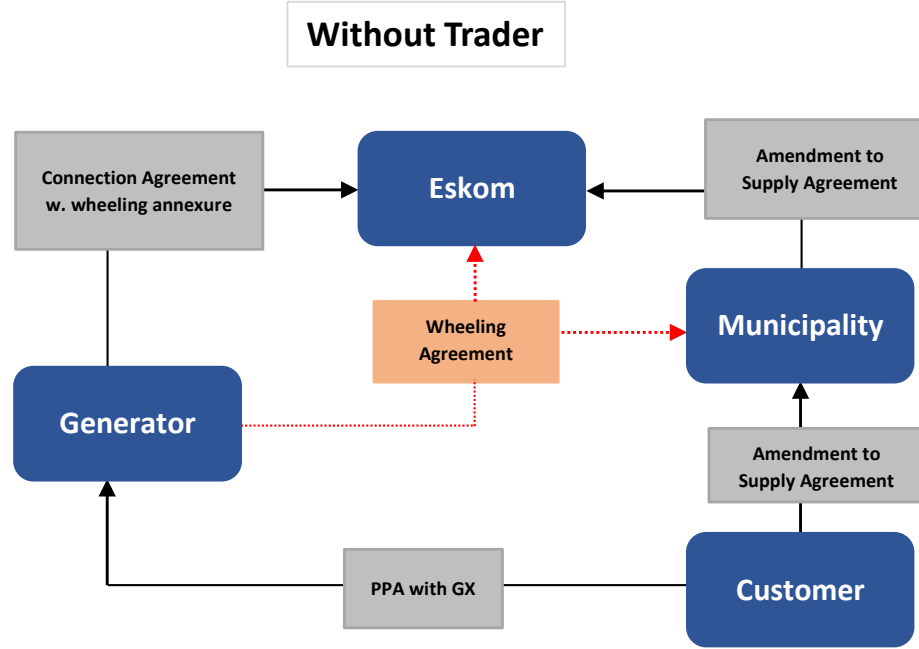
Contractual Parties to a Wheeling Agreement

Wheeling not about electrons...

Wheeling is the **financial transactions** representing the transportation of third party electrical energy (kWh) over the **distribution network** which allows for the third party supplier to sell this electrical energy to a **customer** at that customer's point of supply.

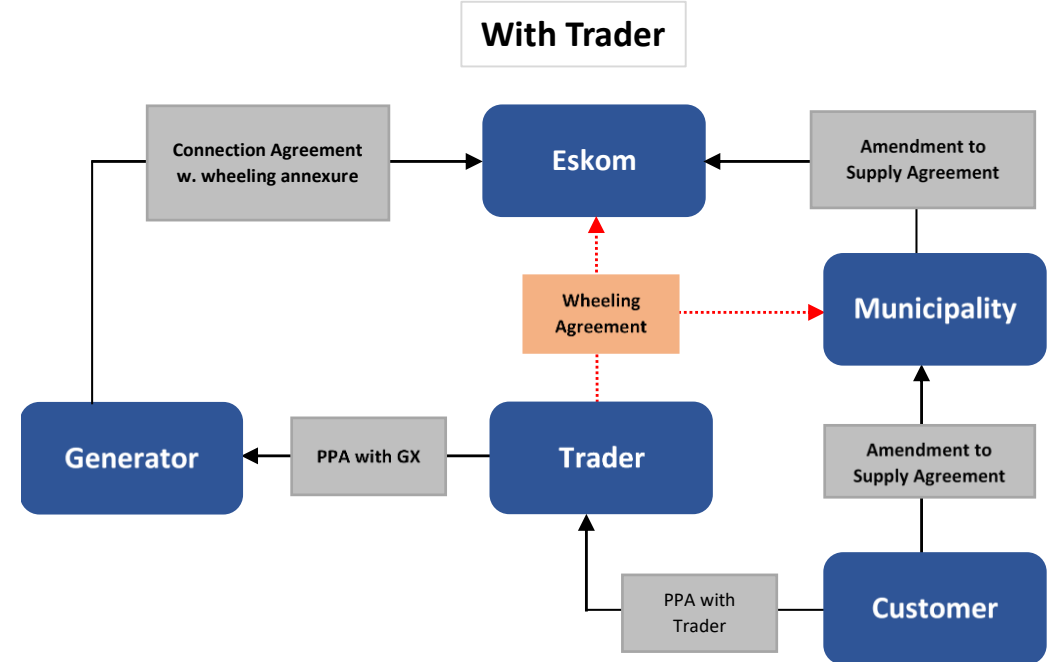
Contractual Parties to a Wheeling Agreement

Eskom-connected Generator and Municipal-connected Off Taker



APPLICABLE CONTRACTUAL AGREEMENTS:

- Customer signs PPA with Generator
- Generator signs Connection/Use-of-System Agreement with Eskom, with a wheeling annexure.
- ESA between Municipality and Eskom amended to reflect delivery of private power
- ESA between Customer and Municipality amended to reflect delivery of private power
- **NERSA REQUIREMENT:** Generator to enter into a wheeling agreement with Eskom & Municipality

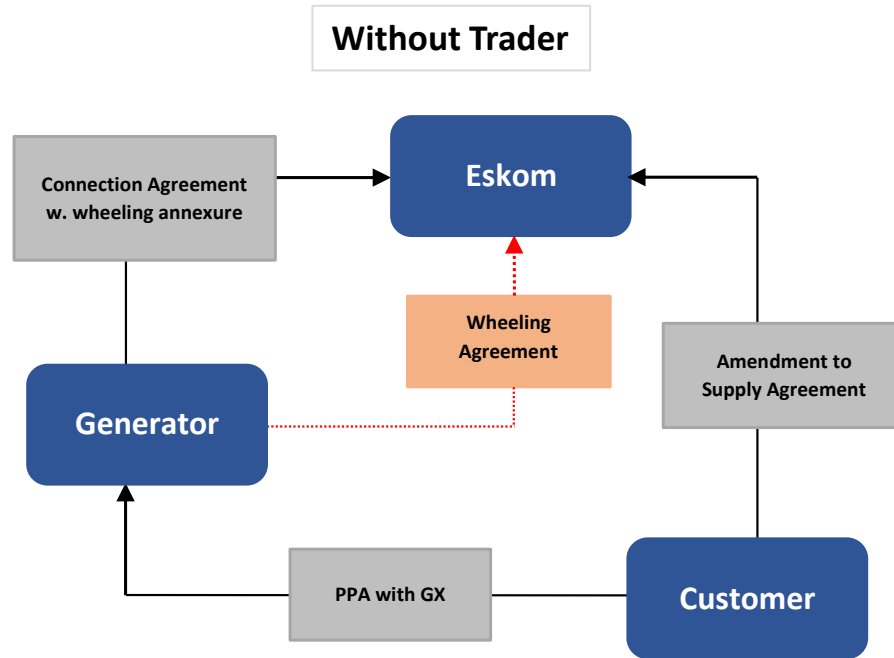


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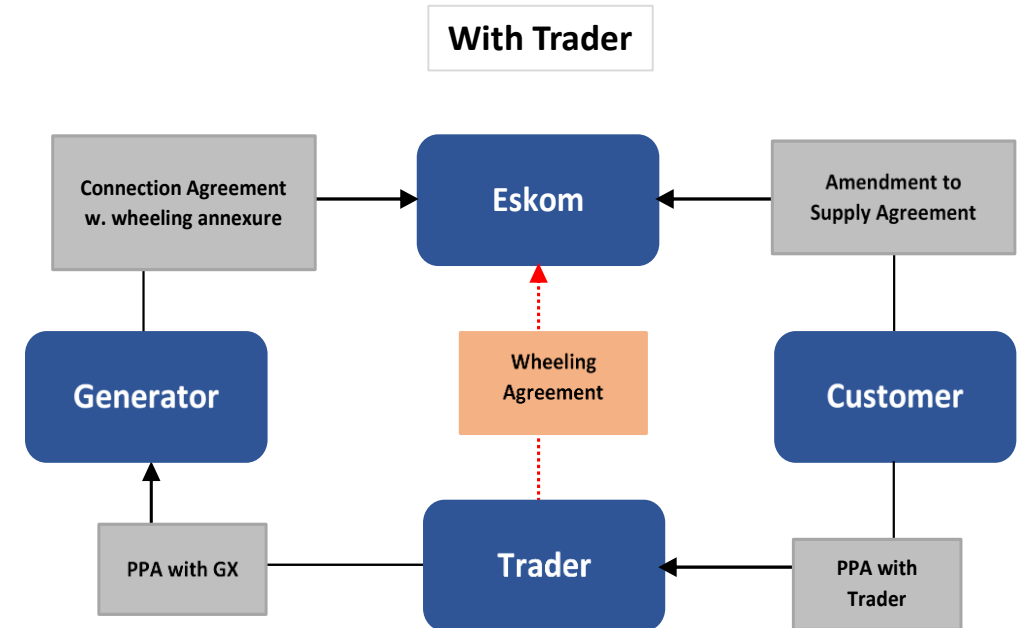
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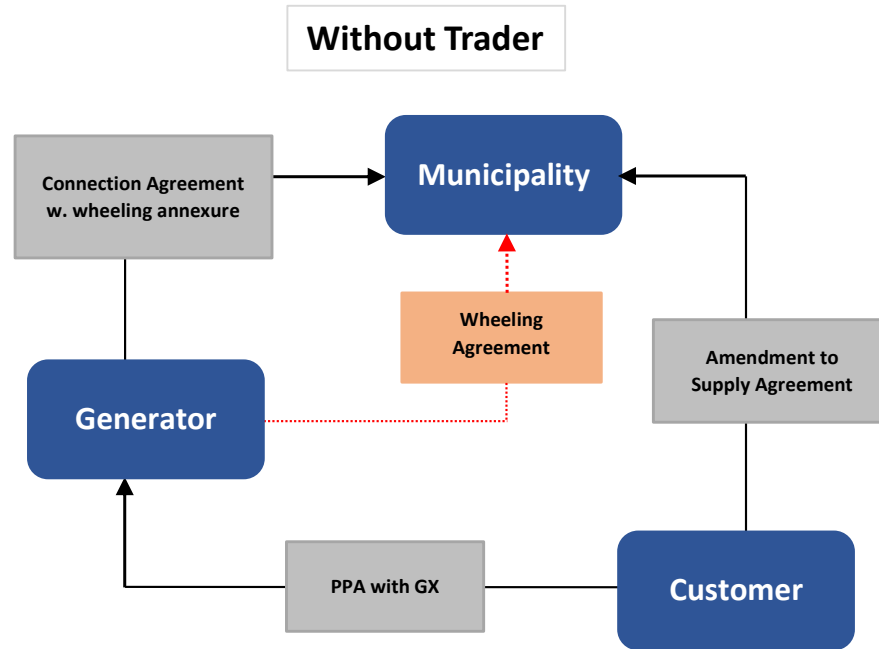


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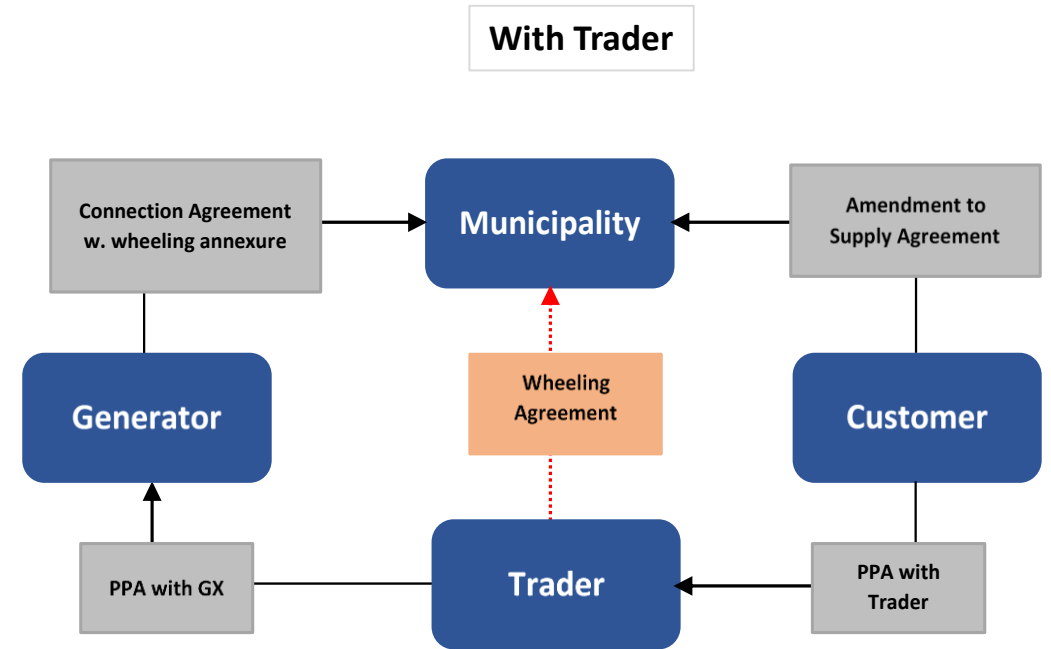
Contractual Parties to a Wheeling Agreement

Both Generator Off Taker inside a muni



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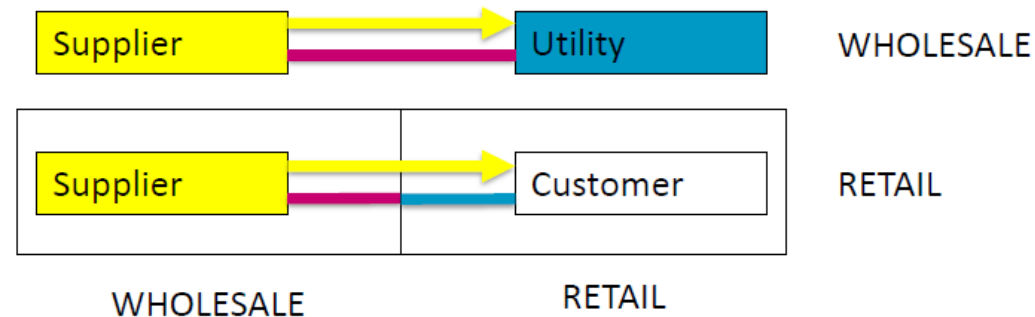
Legal Framework

Municipal obligations for
wheeling agreements

Stolen from CCT Wheeling Framework Presentation...

Legal framework

- NER/D/CAPETOWN
 - Must provide for non-discriminatory access to the distribution power systems to third parties.
- City of Cape Town Electricity Supply By-law of 2010
 - Allows for retail wheeling of electricity through the City's network by a third party licensed electricity supplier to customers within the City Supply Area



Municipal Obligations for Wheeling Agreements

Understanding the Legislative Framework

The legislative framework governing Municipalities' obligations in respect of wheeling agreements include:

- Constitution of South Africa
- Electricity Pricing Policy (GG31741 19 December 2008) ("EPP")
- Electricity Regulation Act (2006) ("ERA")
 - Cost of Supply Framework for Licensed Electricity distributors in SA
 - Regulatory Rules on Network Charges for Third Party Transportation of Electricity ("Rules")
 - RSA Distribution Code (Version 6) ("Grid Code")
 - Distribution Licence issued to Ekurhuleni
- National Energy Regulator Act (2004) ("NERSA Act")
- Local Government (Municipal Systems) Act (2000) ("Systems Act")
- Municipal Fiscal Powers and Functions Act (2007) ("MFPFA")

ERA S2 Objects of the Act:

- (a) Achieve the efficient, effective sustainable and orderly development and operation of electricity supply infrastructure in SA
- (b) Ensure the the interests of future and present electricity customers and end-users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of the of economic energy regulation in the Republic
- (c) Facilitate investment in the electricity supply industry
- (d) Facilitate universal access to electricity
- (e) to promote the use of diverse energy and energy efficiency
- (f) to promote competitiveness and customer and end user choice
- (g) Facilitate a fair balance between the interests of the customers and end users. Licensees, investors in the electricity supply industry and the public

Municipal Obligations for Wheeling Agreements

Section 21 ERA

S21(2) deals with non-discriminatory access to electricity services of Licensees customers (for instance wheeling).

S21 (3) and (4) deals with non-discriminatory access of third parties to a Licensees network, and subsection (4) expands on the rights/conditions – in this instance third party access could be a generator wanting a new connection.

S21 must be interpreted in the context of the Objectives of the ERA (S2), in particular relating to customer and end user choice. Further, the distribution license incorporates all conditions imposed by the ERA (which includes Rules), in particular in this case:

- “The promotion of non-discriminatory access: The ability of customers to contract independently with IPPs and non-discriminatory access to and use of the transmission and distribution networks to generators should be promoted.” (3 Objectives)
- “...any customer shall be free to go into bilateral arrangements with any 3rd part generator...” (6 General Use of System Charges Principles)
- “...Wheeling shall be allowed...” (12.1 Wheeling Arrangement)

21 Powers and duties of licensee

(1) A licence issued in terms of this Act empowers and obliges a licensee to exercise the powers and perform the duties set out in such licence and this Act, and no licensee may cede, transfer any such power or duty to any other person without the prior consent of the Regulator.

(2) 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.

(3) A transmission or distribution licensee must, to the extent provided for in the licence, provide non-discriminatory access to the transmission and distribution power systems to third parties.

(4) Access in terms of subsection (3) must be provided on the conditions set out in the licence of such transmitter or distributor, that may relate to-

- (a) the circumstances under which access must be allowed;
- (b) the circumstances under which access may be refused;
- (c) the strengthening or upgrading of the transmission or distribution power system in order to provide for access, including contributions towards such upgrading by the potential users of such systems, if applicable;
- (d) the rights and obligations of other existing or new users regarding the use of such power systems;
- (e) compliance with any rule, code or practice made by the Regulator; or
- (f) the fees that may be charged by a licensee for the use of such power system.

Municipal Obligations

Other Policy Instruments that Oblige Wheeling

ERA (Section 27 (f)): “...Each municipality must exercise its executive authority...by... (f) executing its reticulation function in accordance with relevant national energy policies”.

These include the Grid Code, Rules and EPP, as noted below.

- **Grid Code (item 4(1)):** Obliges municipalities to make capacity available on its network and for non-discriminatory access for the use of the capacity to all customers. This is repeated in the Tariff code (4.2.1(1)).
- **Rules:**
 - “3 Objectives...The promotion of non-discriminatory access...”
 - “6.7 Any load or customer shall be free to go into bilateral arrangements with any third party generator...”
 - “12.1 Wheeling that will be allowed...”
- **EPP (clause 2.6):** “...Network owners have an obligation to allow customers access to and to use the networks, provided that”...(deals with technical issues and account arrears).

The cumulative effect of the above make it clear that Municipalities may not refuse to enter into wheeling agreements unless due a specific technical limitation.

Tariff Construction

Tariff Construction

Understanding the Legislative Framework around Tariff Construction

The legislative framework governing the construction of a tariff is layered and includes:

- Constitution of South Africa
- Electricity Pricing Policy (GG31741 19 December 2008)
- Electricity Regulation Act (2006) (“ERA”)
 - Cost of Supply Framework for Licensed Electricity distributors in SA
 - Regulatory Rules on Network Charges for Third Party Transportation of Electricity
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The **EPP - Access to and use of networks (clause 2.6)** states that:

“...The full cost to operate the networks should be reflected in the various connection and use of system charges. In other words no additional charges are needed to facilitate the wheeling of electricity between two parties unless such wheeling would result in incremental charges...” (our emphasis)

The **Tariff Code (item 4.2.2 (2) and (3))** states that:

“...customers receiving only a network service from a distributor will be charged DUOS costs based on unbundled distribution costs...” and “...DUOS costs will be derived for all customers from the same cost of supply study as all other tariffs...”

The **Municipal Systems Act (S74)** states that a municipality must adopt and implement a tariff policy, which must:

- S74(2)(d) “...tariffs must reflect the cost reasonably associated with the rendering of the service, including capital, operating, maintenance, administration and replacement costs and interest charges...”
- (f) provision must be made in appropriate circumstances for a surcharge on the tariff for a service...”

In simple terms, a Municipality may only lawfully charge an approved tariff (i.e. base tariff) or an approved surcharge.

Tariff Construction

Base Tariffs vs. Surcharges

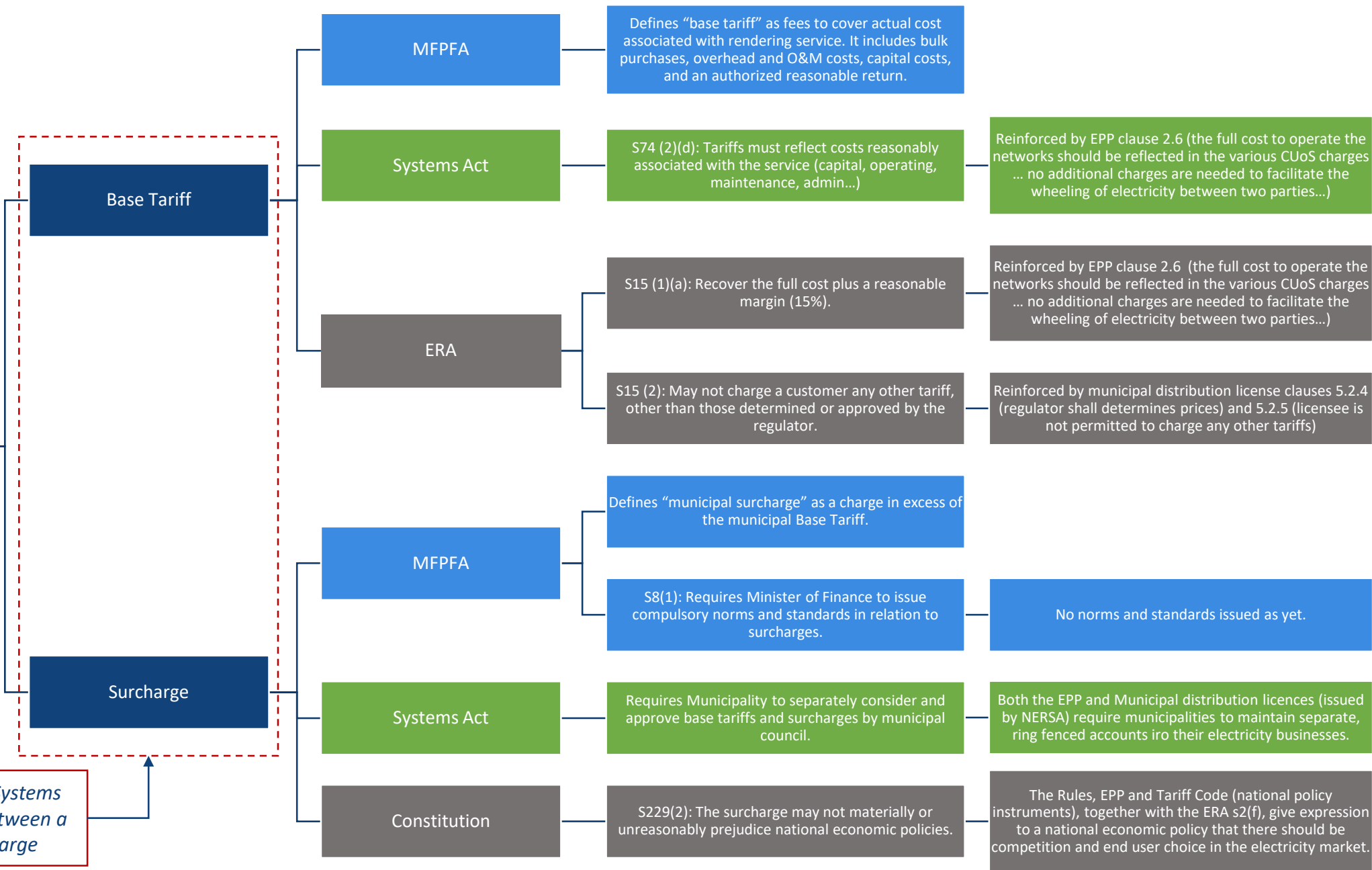
There is a primary distinction between “Base Tariffs” (also referred to as fees for electricity distribution services) and “Surcharges”. Base tariffs and surcharges should be considered separately by Municipalities on an annual basis:

Base Tariff	Surcharge
Fixing and Approval of Tariffs	
<ul style="list-style-type: none">Base tariffs are fixed by NERSA (under ERA s15(2) and Municipal Distribution License clauses 5.2.4 and 5.2.5)	<ul style="list-style-type: none">Surcharges addressed separately through provisions of the MFPFA and subject to regulation by the Minister of Finance.NERSA is not allowed to fix a tariff that includes a surcharge (i.e. a disguised surcharge).If a municipality fixes a surcharge (even in the absence of norms and standards under the MFPFA), the Constitution prevents it from fixing surcharges that “materially and unreasonably prejudices national economic policies”.
Municipal Tariff Methodologies	
<p>Currently, there are two methodologies used in SA to determine tariffs:</p> <ul style="list-style-type: none">NERSA Cost of Supply FrameworkNRS 058 (Cost of Supply Methodology for the application in the Electrical Distribution industry)<ul style="list-style-type: none">This standard can also be interpreted in line with Dr Johan Delport's 5 P's.The NRS058 standard is still in draft format.	<p>The MFPFA s8(1) requires Minister of Finance to issue compulsory norms and standards in relation to surcharges. No such norms and standards have been issued.</p>

Questions

Appendix

Construction of a Tariff



Constitution s229 and Systems Act s74 distinguishes between a base tariff and surcharge