

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 059715/2023

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
02/09/2025	[REDACTED]
DATE	SIGNATURE

In the matter between:

SASOL OIL (PTY) LTD

Applicant

and

NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

First Respondent

TRANSNET SOC LTD

Second Respondent

TOTAL ENERGIES MARKETING SOUTH AFRICA (PTY) LTD

Third Respondent

SHELL DOWNSTREAM SOUTH AFRICA (PTY) LTD

Fourth Respondent

ENGEN PETROLEUM LTD

Fifth Respondent

BP SOUTHERN AFRICA (PTY) LTD

Sixth Respondent

ASTRON ENERGY (PTY) LTD

Seventh Respondent

ROYAL REFINERY (PTY) LTD

Eighth Respondent

JUDGMENT

MAKHOBHA, J

Introduction

[1] On 23 February 2023, the National Energy Regulator of South Africa ("NERSA") approved the tariffs applicable to Transnet's petroleum pipeline system for the period 1 April 2023 to 31 March 2024.

[2] The applicant, Sasol Oil (Pty) Ltd ("Sasol"), became aware of the impugned decision on 16 March 2023, following its publication on NERSA's website.

[3] Sasol seeks an order to review and set aside NERSA's decision in terms of the Promotion of Administrative Justice Act¹ ("PAJA"), alternatively, under the principle of legality.

Parties

[4] The applicant is Sasol, a company duly incorporated in terms of the company laws of the Republic of South Africa.

[5] The first respondent is NERSA, a statutory body established in terms of section 3 of the National Energy Regulator Act² ("the NERSA Act"). NERSA has a mandate in terms of section 28 of the Petroleum Pipelines Act³ ("the PPA") to "set as a condition

¹ 3 of 2000.

² 40 of 2004.

³ 60 of 2003.

of a licence the tariffs to be charged by a licensee in the operation of a petroleum pipeline and approve the tariffs for storage facilities and load facilities”.

[6] The second respondent is Transnet SOC Ltd (“Transnet”), a state-owned entity incorporated in terms of the company laws of the Republic of South Africa, and the Legal Succession to the South African Transport Services Act.⁴

[7] The third respondent is TotalEnergies Marketing South Africa (Pty) Ltd (“Total”), a company incorporated in terms of the company laws of the Republic of South Africa.

[8] The fourth respondent is Shell Downstream South Africa (Pty) Ltd (“Shell”), a company incorporated in terms of the company laws of the Republic of South Africa.

[9] The fifth respondent is Engen Petroleum Ltd (“Engen”), a public company incorporated in accordance with the company laws of the Republic of South Africa.

[10] The sixth respondent is BP Southern Africa Pty (Ltd) (“BP”), a company incorporated in accordance with the company laws of the Republic of South Africa

[11] The seventh respondent is Astron Energy (Pty) Ltd (“Astron”), a company incorporated in accordance with the company laws of the Republic of South Africa.

[12] The eighth respondent is Royal Refinery (Pty) Ltd (“Royal”), a private company incorporated in accordance with the company laws of the Republic of South Africa.

[13] The ninth respondent is the Airline Industry Association of Southern Africa NPC, a voluntary association of airline companies.

[14] The tenth respondent is the Minister of Mineral Resources and Energy, cited in his official capacity as the Cabinet member responsible for energy and whose department is responsible for setting retail fuel prices.

⁴ 9 of 1989.

[15] The second to tenth respondents are cited for such interest as they may have in the application. No substantive relief is sought directly against them, save for an order as to costs in the event of opposition.

[16] On 28 May 2025, Transnet, the second respondent, withdrew its opposition to the application. The matter has been since been settled between the applicant and the second respondent.

[17] A point in *limine* initially raised was subsequently abandoned and was not proceeded with.

Grounds of review

Applicant submissions

[18] The applicant lists the following as the grounds of review:

18.1 It is contended that NERSA erred by failing to distinguish between the different pipelines within the system and instead regarded them collectively as a single network. The Applicant submits that this was unlawful, as the PPA affords no authority for such an approach.

18.2 The applicant accepts that NERSA acknowledged differences between the Crude Oil Pipeline ("COP") and the Multi-Product Pipeline ("MPP"). It argues, however, that NERSA nonetheless relied on the rolled-in tariff methodology adopted in 2011, which was no more than a guideline and never a binding rule of law.

18.3 The applicant submits further that, in order to ensure a fair tariff for COP users, NERSA was obliged to consider fairness as a material factor in terms of section 28(2)(a)(ii) of the PPA. Its failure to do so, it is contended, renders the decision irrational and unlawful.

18.4 It is also argued that the decision was unreasonable in that NERSA imposed a uniform tariff across the system, on the basis of the rolled-in approach adopted in 2011.

18.5 The applicant refers to the minutes of NERSA's meetings, noting that Sasol's submissions were absent from the deliberations. This omission, it contends, supports the conclusion that the impugned decision is reviewable.

18.6 Lastly, the applicant contends that NERSA's decision was unfair and discriminatory, contrary to section 28(2) of the PPA, and therefore reviewable under sections 6(2)(b) and 6(2)(f)(i) of PAJA.

[19] In summary, the applicant's case is that its submissions were disregarded, and that the adoption of the 2011 rolled-in methodology was inappropriate for the 2023/24 tariff determination. On this basis, the applicant contends, the decision is said to be unlawful and unreasonable.

First respondent's submissions

[20] NERSA averred that the rolled-in methodology was adopted in 2011. As that decision was never challenged, it remains valid until set aside by a court. The present application, it argues, does not constitute such a challenge.

[21] NERSA further contended that section 28(1) of the PPA does not prescribe a tariff-setting methodology. Its adoption of the rolled-in approach, consistently applied since 2011, falls within its statutory discretion.

[22] NERSA relies on regulation 4(1)(d) of the PPA,⁵ which it says confers a discretionary power to determine tariff increases.

[23] NERSA submits that it is the duty of the applicant to prove before the Court that such discretion was exercised *ultra vires*.

⁵ Regulations in terms of the Petroleum Pipelines Act 60 of 2003, GN R342 GG 30905, 4 April 2008.

[24] It argues further that the methodology used is rationally connected to the purpose of the PPA. The rolled-in approach, when read with section 28 of the PPA, is said to strike a fair balance among all jurisdictional factors in the provision.

[25] NERSA adds that Sasol has failed to provide any explanation for its delay in challenging the 2011/12 methodology, which it considers fatal to the Applicant's case.

[26] In reply to the first ground of review, NERSA submits that Sasol's contention that each pipeline should be tariffed separately disregards the holistic approach required to balance the interests of all stakeholders. The rolled-in methodology, it maintains, is consistent with section 28(1) of the PPA and regulation 4(2).⁶

[27] In respect of the second ground, NERSA argues that Sasol cannot be permitted to challenge the 2011 decision indirectly through the 2023/24 tariff determination. Fairness, it submits, must be evaluated with reference to all stakeholders.

[28] On the third ground, NERSA states that it did consider Sasol's written submissions and the Genesis report, but only insofar that they were relevant.

[29] As regards the fourth ground, NERSA argues that section 28(2)(a) of the PPA does not impose a rigid criterion by which tariffs must be mechanically tested. It cannot be interpreted as dictating that the exclusion of a particular interest automatically renders a tariff unfair or discriminatory.

[30] Lastly, NERSA contends that Sasol's case rests on its narrow commercial interest in the Natref refinery. Its claim that the COP tariff is unfair merely because MPP costs are higher, NERSA argues, overlooks the broader context. It points out that Sasol's interests were taken into account in 2011 when the rolled-in methodology was adopted, and that there are also circumstances where COP costs may exceed those of the MPP.

Applicable legal principles

⁶ See n.5 above.

[31] In *National Energy Regulator of South Africa and Another v PG Group (Pty) Ltd and Others (PG Group (Pty) Ltd)*⁷ the Court held:⁸

“The Maximum Pricing Methodology is not law, but rather a guideline made in accordance with the empowering legislation. NERSA thus has discretion not to rigidly apply the methodology if its application would lead to irrational or otherwise unlawful results”

It is now settled law that a pricing methodology is not rigid, but operates as a guideline.

[32] The requirement in Sections 28(2)(a)(i)-(vi) of the PPA is central to this matter. It stipulates that the tariff charged must be—

- i. “based on a systematic methodology applicable on a consistent and comparable basis;
- ii. fair;
- iii. non-discriminatory;
- iv. simple and transparent;
- v. predictable and stable;
- vi. such as to promote access to affordable petroleum products;”

[33] It follows that the applicant must establish that NERSA failed to meet the requirements of section 28 of the PPA.

[34] Section 6(2)(f)(ii) of PAJA provides that an administrative action may be reviewed and set aside if it is not rationally connected to the following—

- “(aa) the purpose for which it was taken;
- (bb) the purpose of the empowering provision;
- (cc) the information before the administrator; or
- (dd) the reasons given for it by the administrator;”

Evaluation

[35] In my view, it was incumbent on NERSA to demonstrate that no differences between the COP and the MPP, and that imposing a single tariff across both was fair.

[36] It is unnecessary, in my view, for Sasol to challenge the 2011 tariff methodology. As confirmed by *PG Group (Pty) Ltd*,⁹ that methodology is no more than a guideline. NERSA’s argument to the contrary is without merit.

⁷ 2020 (1) SA 450 (CC).

⁸ i.d n.7 at para 33.

⁹ i.d n.7.

[37] NERSA nonetheless had the responsibility to show that the tariff set was fair, reasonable and rational, and complied with section 28 of the PPA.

[38] In *Democratic Alliance v President of the Republic of South Africa and Others*,¹⁰ the Constitutional Court held that a failure to consider a relevant material factor in taking an administrative decision may render the decision irrational.

[39] In my view, there are significant differences between the COP and the MPP, including differences in operational characteristics and costs. The costs associated with the MPP are higher than those of the COP.

[40] NERSA's failure to recognise these differences amounts to non-compliance with section 28(2)(a)(ii) of the PPA, rendering the tariff unfair to the applicant.

[41] NERSA misdirected itself by adopting the rolled-in methodology of 2011 and disregarding the submissions made by Sasol.

[42] It ought to have given proper consideration to Sasol's submissions in favour of separate tariffs for the COP and MPP in order to ensure fairness for COP users.

[43] It is unreasonable for NERSA to impose a single pipeline system tariff based on the 2011 rolled-in approach. The COP operates upstream of refining, whereas the MPP is downstream, and the two pipelines are not physically connected.

[44] I am therefore satisfied that the impugned decision is irrational and unreasonable, and that it falls to be reviewed and set aside.

Order

[45] I make the following order:

45.1 The decision made by the first respondent on 23 February 2023, approving tariffs in respect of the second Respondent's petroleum pipeline system (the impugned decision), is reviewed and set aside on the grounds set out in the founding affidavit.

45.2 The impugned decision is remitted back to the first respondent for reconsideration.

45.3 The first respondent is directed to pay the costs of this application.

45.4 No order as to costs is made against the second to tenth respondents.

¹⁰ 2013 (1) SA 248 (CC) at paras 36 and 39.



D. MAKHOB A J
JUDGE OF THE HIGH COURT
PRETORIA

Date of Hearing: 04–06 August 2025

Judgment delivered: 02/09/2025

APPEARANCES:

For the Applicant:

G Singh, B Dhladhla, and M Nguta instructed by
Mchunu Attorneys

For the First Respondent:

A F Arnoldi SC, P Managa, and O Mulaudzi
instructed by Mothle Jooma Sabdia Incorporated