IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **2025-226981**

(1) REPORTABLE:
(2) OF INTEREST TO OTHER JUDGES:
(3) REVISED.

18/02/2026 [redacted]

DATE SIGNATURE

MPACT (PTY) LIMITED & OTHERS	First Applicant
MPACT OPERATIONS (PTY) LTD	Second Applicant
MPACT PLASTICE CONTAINERS CASTLEVIEW (PTY) LTD	Third Applicant
and	
EKURHULENI METROPOLITAN MUNICIPALITY	First Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Second Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

[1] The Applicants seek urgent interdictory relief restraining the First Respondent municipality from terminating their electricity supply pending the finalisation of

review proceedings instituted against the National Energy Regulator of South Africa ("NERSA") concerning the approval of tariffs for the 2024/2025 and 2025/2026 financial years.

[2] The matter raises the intersection of municipal credit control powers, administrative law principles, and constitutional rights to fair administrative action.

URGENCY

[3] The matter is urgent. Electricity is indispensable to the Applicant's operations, and termination would cause irreparable harm. The Constitutional Court has recognised that deprivation of essential services implicates constitutional rights and justifies urgent judicial intervention.[1]

FACTUAL BACKGROUND

[4] The Applicants are commercial entities operating within the area of the First Respondent who supplies them with electricity.

[5] There is an ongoing dispute between the First Respondent and the Applicants regarding the electricity charges levied, which are based on tariffs approved by the Second Respondent, NERSA.

[6] In an unrelated matter of *AfriForum v NERSA*[2], this Court (per Labuschagne J) declared NERSA's approval procedures of the said tariffs invalid but did not set aside the tariffs themselves.

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[1] *Mkontwana v Nelson Mandela Metropolitan Municipality*, 2005 (1) SA 530 (CC).

[2] (2025/137620) [2025] ZAGPPHC 1176 (31 October 2025).

[7] The Applicants have instituted review proceedings seeking to set aside NERSA's approval of the 2024/2025 and 2025/2026 tariffs.

[8] Pending resolution, the Applicants have consistently paid amounts reasonably calculated for electricity consumed. They have undertaken to pay any shortfall should the review confirm the validity of the tariffs, or to claim a refund if overpayment is established.

[9] The First Respondent has threatened to disconnect the supply unless full payment is made.

[10] The Applicants argue that:

a) The First Respondent cannot lawfully rely on tariffs adopted through a defective process.

b) The municipality has failed to disclose the cost structure underpinning its charges, contrary to constitutional principles of transparency, accountability and public participation.[3]

RESPONDENT'S CONTENTIONS

[11] The Respondent contends that:

a) It is bound to apply tariffs approved by NERSA.

b) The Applicant's unilateral determination of "fair charges" is unlawful.

c) The principle of legality requires compliance with existing tariff determinations until they are set aside.

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[3] Sections 195 and 217 of the Constitution of the Republic of South Africa, Act 108 of 1996.

LEGAL FRAMEWORK

[12] The Electricity Regulation Act 4 of 2006 ("ERA") establishes the regulatory framework for electricity supply and tariffs.

a) Section 14(1) empowers NERSA to regulate prices and tariffs.

b) Section 102(1) provides that disputes regarding electricity tariffs may be referred to the High Court for adjudication.

c) Section 102(2) confirms that the High Court has jurisdiction to review or set aside decisions of NERSA.

[13] Municipalities derive their authority to levy charges for electricity from section 229(1)(b) of the Constitution, which permits them to impose surcharges on fees for services provided. This power is subject to national regulation, including ERA.

[14] Section 75A of the Local Government: Municipal Systems Act 32 of 2000 authorises municipalities to levy and recover fees for services, but this must be exercised in line with national legislation and constitutional principles of legality, transparency, and accountability.

APPLICABLE LAWS AND PROCEDURES

[15] Section 102 of the Local Government: Municipal Systems Act 32 of 2000 permits municipalities to consolidate accounts and implement credit control measures but requires compliance with prescribed procedures.

[16] Electricity Regulation Act 4 of 2006 empowers NERSA to regulate tariffs, subject to lawful procedures.

[17] The Municipal Finance Management Act 56 of 2003 governs municipal financial conduct, including revenue collection.

[18] Municipal Supply By-laws typically require at least 30 days' written notice before disconnection.

[19] Section 33 of the Constitution, read with the Promotion of Administrative Justice Act 3 of 2000 (PAJA), guarantees procedurally fair administrative action.

PRECEDENTS

[20] The Constitutional Court has held that electricity supply is a public service and termination without adequate notice is procedurally unfair.[4]

[21] In *Mkontwana v Nelson Mandela Metropolitan Municipality*, the Court emphasised balancing municipal credit control powers with constitutional rights.[5]

[22] In *Resilient Properties (Pty) Ltd v Eskom Holdings SOC Ltd*, interim relief was granted to prevent disconnection pending resolution of disputes, recognising irreparable harm.[6]

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[4] 2010 (4) SA 55 (CC).
[5] 2005 (1) SA 530 (CC).
[6] 2019 (1) SA 622 (GP).

[23] In *Copper Sunset Trading 443 (Pty) Ltd v Centlec SOC Ltd*, the Free State Division recognised that consumers who continue to pay amounts they deem reasonable are not defaulters and that disconnection in such circumstances requires judicial scrutiny.[7]

[24] In *City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd*, the Supreme Court of Appeal reaffirmed municipalities' power to cut supply for non-payment but stressed that good faith payments and disputes over quantum must be weighed in assessing fairness.[8]

ANALYSIS

[25] The court must balance two principles:

a) The *Oudekraal Estates*[9] principle, which requires compliance with administrative acts until set aside.

b) The constitutional imperative of lawful, transparent, and participatory governance.

[26] Section 102 of ERA is significant. It provides a statutory mechanism for disputing tariffs and empowers courts to adjudicate such disputes. This reflects the constitutional principle of legality[10], ensuring that administrative decisions are subject to judicial scrutiny.

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[7] (2189/2023) [2023] ZAFSHC [Unreported].
[8] (1346/2022) [2024] ZASCA 51; 2024 (6) SA 159 (SCA) (18 April 2024).
[9] 2004 (6) SA 222 (SCA); [2004] 3 All SA 1 (SCA); [2004] ZASCA 48 (28 May 2004).
[10] Section 1(c) of the Constitution.

CONSTITUTIONAL PRINCIPLES

[27] Section 33 guarantees the right to lawful, reasonable, and procedurally fair administrative action.

[28] Section 195 requires public administration to be accountable and transparent.

[29] Section 22 protects the right to choose and practice a trade, occupation, or profession freely. Termination of the electricity supply would unjustifiably limit this right.

[30] Section 1(c) enshrines the principle of legality, requiring that all exercises of public power be lawful.

[31] Section 229 of the Constitution grants municipalities fiscal powers, but these are not unfettered. They must be exercised within the framework of national legislation and constitutional values. *In Fedsure Life Assurance v Greater Johannesburg Transitional Metropolitan Council*[11], the Constitutional Court held that municipal fiscal powers are subject to legality and rationality.

ANALYSIS

[32] The Applicant's reliance on section 102 of ERA is well-founded. The provisions enable the court to intervene where tariffs are disputed, even before a formal review is finalised, to prevent irreparable harm.

[11] 1999 (1) SA 374 (CC).

[33] In *All Pay Consolidated Investment Holdings v CEO of SASSA*[12], the Constitutional Court emphasised that procedural defects in administrative processes undermine legality and cannot be condoned. The Afriforum v NERSA judgment demonstrates that NERSA's process was defective[13], raising serious doubts about the validity of the tariffs. While approved tariffs are ordinarily enforceable, the declaration of invalidity of the process leading to the approval of the 2024/2025 and 2025/2026 tariffs in *Afriforum v NERSA*, necessarily impugns the approval of these tariffs and their enforceability, in my view. The *Oudekraal Estates* matter[14] establishes that the court is empowered under section 102 of ERA to grant interim relief to prevent injustice.

CONCLUSION

[34] I find that the Applicants have established a *prima facie* right to a continued supply of electricity, pending the review proceedings.

[35] The Applicants' ongoing payments demonstrate good faith and compliance with obligations, distinguishing them from defaulters. This factor weighs heavily in favour of the granting of the interim protection sought, as recognised in *Copper Sunset and Vresthena.*[15]

[36] The threat of disconnection would cause irreparable harm to the Applicants' businesses.

[37] The balance of convenience favours the Applicants: termination of electricity supply would cause irreparable harm, whereas the Respondent will suffer no prejudice if supply continues, particularly in that the Applicants undertake to pay any shortfall should the tariffs be found to be valid.

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[12] 2014 (1) SA 604 (CC).
[13] [2022] ZAGPPHC 778 (20 October 2022).
[14] 2004 (6) SA 222 (SCA); [2004] 3 All SA 1 (SCA); [2004] ZASCA 48 (28 May 2004).
[15] Ibid 7.

[38] The Respondent's threat to disconnect will be procedurally unfair, unless the statutory minimum of 30 days' notice is afforded.

[39] The Applicants' reliance on section 102 of the Municipal Systems Act is well-founded, as the provision regulates municipal powers and requires compliance with due process.

ORDER

[40] Consequent to the findings in this judgment, I make the following orders:

The Primary Relief Sought

1. The first respondent (Ekurhuleni Municipality) is interdicted from disconnecting the electricity supply to the premises of the applicants pending the finalisation of the disputes lodged by the applicants in terms of section 102 of the Systems Act[16] (Systems Act).

First Alternative Relief

2. To the extent that the first respondent took a decision to reject or refuse to decide the applicants' dispute under section 102 of the Local Government: Systems Act, that decision is declared inconsistent with the Constitution of the Republic of South Africa, invalid, reviewed and set aside.

3. The first respondent is interdicted from disconnecting the electricity supply to the premises of the applicants pending the finalisation of the disputes lodged by the applicants in terms of section 102 of the Systems Act, regardless of when the disputes are finally resolved.

The Second Alternative Relief

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[16] Municipal Systems Act 32 of 2000.

4. In the alternative to the relief sought in paragraph 1, 2 and 3 above, the first respondent is interdicted from disconnecting the electricity supply to the premises of the applicants pending the final determination of the application in case no: 2025-185401.

The Third Alternative Relief

5. In the further alternative to the relief sought in paragraphs 1 to 4 above, the first respondent is interdicted from disconnecting the electricity supply to the premises of the applicants without following the procedure set out in this paragraph:

5.1 Should the first respondent intend to disconnect the electricity supply to the premises of any of the applicants, it is to furnish the relevant applicant with a notice in which it is recorded that:

5.1.1 The first respondent intends to disconnect the electricity supply to the relevant applicant's premises in no less than 30 days from the date of the letter.

5.1.2 The relevant applicant is entitled to make written representations to the first respondent within 14 days of receipt of the notice as to why the electricity supply should not be disconnected.

5.2 The first respondent is precluded from disconnecting the electricity supply to the premises of the relevant applicant until the latter of either:

5.2.1 The elapsing of the 30-day period without the relevant applicant making any written representations; or

5.2.2 The completion of the period set out in prayer 5.3 below.

5.3 Should the relevant applicant take up the opportunity to make representations; the first respondent is precluded from disconnecting electricity supply to the premises of the relevant applicant without following the process set out below:

5.3.1 The first respondent is to consider the written representations made by the relevant applicant.

5.3.2 If, having considered the representations, the first respondent decides nevertheless, to disconnect the electricity supply to the premises of the relevant applicant they are to inform the relevant applicant accordingly, and provide written reasons for such decision.

5.4 When informing the relevant applicant of the decision described in paragraph 5.3.2, the first respondent is to adopt the following procedure:

5.4.1 The decision to disconnect the electricity supply notwithstanding the relevant applicant's written representations, including the reasons for such decision (the "decision notification") must be conveyed to the relevant applicant in writing.

5.4.2 The decision notification must record that, should the relevant applicants contest the right of the first respondent to disconnect the electricity, the relevant applicant, is entitled to approach a competent Court for urgent relief.

5.4.3 The decision notification must record that, should the relevant applicants choose to challenge the disconnection decision as envisaged by paragraph 5.4.2 above, the electricity supply will not be disconnected pending the finalisation of the litigation in question, subject to the conditions that:

5.4.3.1 The relevant applicant must inform the respondents of its decision to challenge the lawfulness of the proposed disconnection within three days of receipt of the decision notification.

5.4.3.2 The relevant applicant launches its urgent application within seven days of informing the respondents of its intention to do so as envisaged by paragraph 5.4.3.1 above.

6. In the event that Ekurhuleni fails, on receipt of this application, to confirm in writing that it will consent to the order set out in paragraph 1 above made an order of court, the respondents are to pay the applicants' costs on attorney-own-client scale.

[redacted]

MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA

APPEARANCES

For the Applicants	Advocate M Chaskalson SC
with	Advocate S Pudifin-Jones
	Advocate N Mahlangu
	Advocate E Cohen
Instructed by	Nortons Incorporated
For the First Respondent	Advocate Uys SC
Instructed by	Klopper Jonker Incorporated

Date of Hearing: **05 February 2026**

Date of Judgement: **18 February 2026**

THIS JUDGEMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINE ON 18 FEBRUARY 2026.