GOLDEN TRIANGLE CHAMBER of COMMERCE

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MEDIA RELEASE

Golden Triangle Chamber of Commerce (GTCoC)

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HIGH COURT REVERSES PREDATORY POWER INCREASES BY EMFULENI LOCAL MUNICIPALITY (ELM)

1. The GTCoC sees the High Court Order this week reversing the predatory and exorbitant electricity price increases (almost 21%) of the Emfuleni Local Municipality (ELM) as a victory for social justice, business and the Emfuleni community.
2. The GTCoC now demands ELM immediately reverse these predatory tariff increases applied for and implemented by stealth and blatant dishonesty through Nersa and imposed on business and residents of Emfuleni without consultation. ELM was granted these tariffs by Nersa despite late application and under false premises.
3. These predatory tariff impositions are a dishonest attempt by ELM top management to replace revenue lost through its own numerous gross management failures, the ruined revenue-generating Smart Meter Programme being but one example which has already cost ELM more than R60 million in lost revenue since June 2019.
4. The GTCoC therefore demands ELM immediately take steps to reverse predatory tariff increases before month-end of October and immediately repay these proceeds of dishonesty back to business and residents.
5. The GTCoC specifically singles out the central role of acting Municipal Manager Dithaba Oupa Nkoane in this dishonest application, made to Nersa under false pretences that ELM would collapse financially without the granted tariff increases, and again calls for his immediate suspension on grounds of gross negligence and dishonesty.
6. Additionally, the GTCoC also demands ELM Chief Financial Officer Andile Dyakala also be immediately suspended on these predatory and dishonest tariff increases. Dyakala is also involved in the disastrous meter replacement programme along with Nkoane.
7. Nkoane is already mentioned in the almost R900 million Comperio Report into a wide spectrum of corrupt and unauthorised ELM contracts but despite this ELM Council still voted (ANC and EFF) to extend his contract by another three months.

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BACKGROUND AND KEY INSIGHTS.

The effect of the court order is that the electricity tariff increase implemented by the ELM must be reversed, with the practical result that there will be no tariff increase within Emfuleni's area of jurisdiction for the 2019/ 2020 financial year.

PSN acting on behalf of the applicants, was initially instructed by the Golden Triangle Chambers of Commerce ("**GTCOC**") in the interests of its members and the general public.

GTCOC was also a party to the court application and a number of other industries and businesses have joined the court proceedings.

The legal argument was that the electricity tariff increases was invalid for two main reasons:

7.1 NERSA did not follow due process when it approved the increase. There was no proper opportunity for anyone, any industry or any other consumer for that matter, to address NERSA on the impact that the municipal electricity increase may have.

7.2 ELM's application and the NERSA approval was in any event too late to be implemented on the 1st of July 2019.

7.3 At the time, ELM made a statement to the effect that it had to increase the electricity tariffs due to its dire financial position resulting from the so-called 1987 electricity agreements concluded with Large Power Users ("**LPU**"). This statement is incorrect and there are three important factors to note:

7.4 Some of the LPU's that ELM included in its reference to the 1987 agreements, were not even in existence in 1987.

7.5 The municipality at the time (1987), approached particular LPU where electricity was supplied directly by Eskom and asked to administer the account for the municipality's own financial gain. (In general, LPU's accept that in appropriate instances, that there should be a new tariff dispensation, but not in the manner in which ELM attempts to do so currently.)

7.6 ELM deliberately ignores that in some instance's tariffs were negotiated (post 1994) with LPU's that provided electrical infrastructure at their own cost, whilst Emfuleni on the other hand, does not comply with its obligations to maintain the current electrical infrastructure thus leading to great economic and social hardship in Emfuleni.

8 Although it was not part of the court papers, NERSA addressed a letter to PSN in an attempt to justify the increase. From which letter it appears that NERSA only considered the sustainability of ELM.

9 Although NERSA refers to future needs of electricity consumers and end-users, it admits that it did not hold public hearings or undertook public consultations. This raises the following question: what about the sustainability of LPUs, other consumers and end-users, especially since NERSA clearly did not follow the basic constitutional principle 'hearing the other party'?

10 By its own admission, NERSA acknowledges that the ELM application was submitted late, but NERSA nevertheless approved the increase, on the basis that ELM would, otherwise, not have an approved tariff to be charged for electricity supplied to its customers and end-users from 1 July 2019. The end result of the court order is exactly that; NO electricity increase can be implemented for the 2019 / 2020 financial year.

11 NERSA and ELM ignored municipal legislation in terms of which such late approval cannot be implemented on 1 July 2019. NERSA apparently also ignored the fact that ELM does not comply with its maintenance obligations and that ELM begs 'poverty' despite adverse findings by the auditor general of gross irregular and fruitless expenditure.

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