

The day the regulator refused Petronet

THE National Energy Regulator of SA (Nersa) is just over a year old but has quickly established itself as a force to be taken seriously. From its comprehensive reports on SA's electricity crisis to its two landmark petroleum pipeline decisions, it has shown that it is a regulator in the true sense of the word, and not a negotiator.

Nersa was established in October 2005 in terms of the National Energy Regulator Act of 2004, with a mandate to regulate the petroleum pipelines, piped gas and electricity industries.

In the first of its landmark decisions, it authorised the construction of a petroleum pipeline by Petroline from Maputo to Kendak. This will be the first private investment in a petroleum pipeline in the history of SA. Through this decision, Nersa has shown potential investors that it views the introduction of competition and the facilitation of investment in the petroleum pipelines industry as crucial.

A second landmark decision was its denial of Petronet's (SA's main petroleum pipeline company) recent application for a 5,6% increase in its pipeline tariffs. Petronet is a division of Transnet Holdings and dominates the petroleum pipelines industry,

transporting about 40% of SA's petroleum products and all of the Natref crude oil refinery's requirements through its pipelines.

This decision was widely reported in the media and roundly criticised, with Transnet releasing a strongly worded statement in which it charged that the decision "would have far-reaching consequences for the provision of much-needed pipeline capacity from the coast".

Why did Nersa not allow Petronet an increase?

Had anyone actually read and fully analysed the decision before criticising it, the reasons would have been illuminating. Nersa did what it was expected to do — balance the interests of all parties concerned. The decision is available for public information, illustrating the transparency that often cannot be found in similar kinds of institutions.

The following points emerge when one analyses the situation:

Petronet applied to Nersa on February 6 for a tariff adjustment to be implemented on April 4. How any

regulator can be expected to do justice to a tariff application in such a short time is unbelievable. A regulator typically needs at least five months to analyse an application in depth. Taking into account that Nersa has been in existence for little more than a year, it makes this expectation even more unreasonable.

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Nersa followed a due public process in the short space of time available, ultimately trying to accommodate Petronet's request for a speedy process while adhering to the requirements of legislation. Each point was systematically addressed in the regulatory decision and reasons were given as to why some Petronet arguments were or were not considered.

Nersa had at the time of the decision not received the construction licence application for the R9,5bn new multiproducts pipeline investment by Petronet, which is a statutory requirement. Petronet requested a return on this planned expenditure in 2007-08.

What guarantee did the energy

regulator have that Petronet would actually build this pipeline, while allowing it to charge current customers to pay for an uncertain future expenditure?

As the regulator's decision explicitly states, "this constitutes a cross-subsidy" from current customers of the pipeline to future users of the pipeline and may violate several principles enshrined in the Petroleum Pipelines Act. What would have happened if a new potential entrant had applied for a tariff adjustment without first applying for a licence to construct a pipeline?

Would the regulator then also have been criticised for not granting it a tariff for something that it had not even seen the plan of, or are we just viewing Petronet in a different light as it is SA's main petroleum pipeline company?

It is clear when reading the regulator's decision that every aspect was thought through and analysed and that the regulator carefully weighed the evidence.

Petronet indicated in its application that should the tariff increase not be approved, its revenue would still increase 8% due to volume growth. With the 5,6% tariff increase, it would amount to an approximate 14% increase in revenue compared to

2006-07, or R157m. In actual fact, the difference between the revenue requested by Petronet and the allowable revenue was R68m.

Nersa indicated that it found, taking all the evidence and claims into account, that a reduction in tariffs was warranted and that it had been generous in granting Petronet the tariffs it currently charges.

Supported by consultants, Nersa concluded that Petronet had not proven its case and that the proposed increase could therefore not be justified.

The recommendation was to retain the current tariff structure until an informed decision could be made.

Policy makers, industry and consumers should be very pleased when a regulator makes decisions like these. It illustrates the regulator's independence, objectivity and the fact that it is not captive to any interests.

Nersa has shown with this decision in particular that it has the potential to become a model regulator in SA, well respected by all stakeholders and, crucially, providing a regulatory environment which facilitates private sector investment.

■ *Van Basten is economic regulation programme manager: Trade & Industrial Policy Strategies.*