

# The REDs are coming

Regional Electricity Regulators (REDs) have been under discussion since the early 1990s and numerous debates have been held for and against them. At last the process seems to have been pushed beyond a point of no return with the announcement by President Mbeki that the first RED will be operational by June 2005 and the last of the six by January 2007. The process was given another boost by the announcement by the Minister of Minerals and Energy that the first phase of the first RED would be the amalgamation of the City of Cape Town with Eskom Western Region.

This transformation process is now under full steam and heading for the deadline of June 2005. This, however, presents a huge challenge for the EDI Holdings Company. This company was established by national government for the purpose of creating REDs, in terms of the Energy White Paper and the Blueprint on Electricity Distribution Industry (EDI) Restructuring accepted by the national Cabinet in 2001. The challenge mainly consists of finding a way through the current inhibiting national and local government legislation.

## Background

During the early 1990s it was decided to streamline and rationalise the EDI as the industry

## key points

- There are still many legal impediments to the REDs process.
- The first step towards REDs is starting with the amalgamation of the City of Cape Town and Eskom Western Region.
- EDI Holdings Company is driving the process.

stakeholders then consisted of 400 municipalities and Eskom, distributing electricity to some six million consumers.

This resulted in a wide disparity in tariffs and quality of electricity service in South Africa, which, in turn, was considered inhibiting to the rapid intended deployment of electricity to all people in South Africa and not just the 60% of consumers then being serviced.

It was ultimately decided that the REDs would be the best option for restructuring the industry to make it more effective, in order to reach the goal of 100% electrification, lower electricity prices to the indigent and provision of a more effective service. In May 2001 Cabinet decided to divide the country into six financially viable REDs.

## Restructuring process

The restructuring process is taking place in a highly complex legal environment. Various pieces of legislation are not conducive to easy and effective restructuring, including the Systems Act, the Municipal Finance Management Act (MFMA), the Electricity Act, the Public Finance Management Act (PFMA) and finally, the Constitution.

The EDI Holdings Company now has the difficult but extremely challenging task of getting the first RED established within this minefield of legislative obstacles.

In order to implement the government's resolution to restructure the EDI, it was decided

to create a co-operative agreement. This is a voluntary agreement signed by the various stakeholders that will guide the process until enabling legislation can be enacted and until all other non-enabling legislation can be altered appropriately.

Thus far, all national government departments affected by the process have signed the agreement, along with Eskom, the National Energy Regulation Authority (NERA) and the South African Local Government Association (Salga).

The invitation to municipalities to sign the agreement has proved somewhat problematic, again due to the non-enabling legislation mentioned above.

## Legislative problems

The Systems Act requires a municipality to follow a set procedure to change the way it renders a service such as electricity.

Section 78 requires that a municipality first pursue an internal service delivery assessment process. Only once this has been completed may the municipality assess external service delivery mechanisms. The municipality is then obliged to decide on which mechanism (internal or external) will serve it best.

Although studies at national level indicated that REDs would be the best restructuring process for South Africa as a nation, legislation determines that each municipality must conduct this study for its own region.

Only after such a study has been concluded, and if this study has proved that the REDs will be the best outcome for that municipality, may a council decide to actively participate in the national restructuring process.

Two further pieces of legislation also conflict with the plan. The MFMA and PFMA contradict one another in the determination of what type of company the RED will be. The MFMA provides that municipalities may only join such a company

if it is a municipal entity. This means that the municipality should own the majority shares in the company.

The PFMA, on the other hand, states that the RED must be a public entity in which the State must hold the majority of shares.

The whole process is further compounded by the Constitution, which allocates electricity reticulation as a municipal competence.

Various processes are underway to align the legislation, which are expected to be debated in Parliament in its first session in 2005.

The amalgamation of the City of Cape Town and Eskom Western Region, however, has to be well under way before these Acts can be aligned. This is the major, immediate challenge to the EDI Holding Company.

## Amalgamation of the City of Cape Town and Eskom Western Region

Both Eskom and the City of Cape Town have actively supported the current process and all processes are carefully conducted to ensure that the legislative requirements are adhered to. Cape Town is now busy with the Systems Act Section 78 exercise and hopes to have the internal assessment process concluded by December 2004. At this point the Council hopes to also engage in an external assessment process and to conclude it by the end of January 2005.

Further exercises are being undertaken that would not bind or commit the Council to join REDs before the results of the external assessment of whether the REDs are the best option. These exercises include ring-fencing exercises, which are designed to determine exactly what electricity is worth to Cape Town and which will determine what income it would need from the electricity process in order to maintain its balance of payments.

Council has established a total of nine committees to investigate the differences between Eskom and Cape Town and to source all the

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information to enable an effective decision to be taken.

A process is also underway to include all other municipalities within the first RED region to enable them to have the maximum possible say in the development of this RED and not to leave it in the hands of the two biggest role-players in this RED, namely the City of Cape Town and Eskom.

Road shows were held to disseminate information to all Western Cape municipalities and further road shows are planned for the Northern Cape municipalities falling into the RED ONE (first RED) region.

In addition Salga plans to run two workshops with these municipalities. The first will be held on 9 November 2004 at Worcester to accommodate all the municipalities in the Western Cape, and the second on 11 November 2004 at Upington to accommodate all municipalities within the western half of the Northern Cape.

It is the intention of the EDI Holdings Company to ensure the free and fair participation of all stakeholders in the EDI and also to ensure that South Africa receives an EDI structure that will benefit all of South Africa with the most effective and affordable electricity service.

## **Comment**

It is clear that the drive to restructure the electricity distribution industry and create REDs across South Africa has taken on an increased urgency. Municipalities are well advised to keep a close eye on proposed legislative amendments that will likely be required to enable the process to go further.

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