**Record of Decision**

**Tariff Application by the National Ports Authority for the Tariff Years 2022/23 – 2024/25**

---

- **Following the delays in the submission of the Tariff Application for Tariff Years 2022/23-2024/25 as a result of the cyber-attack suffered by Transnet on its IT system in July 2021 and permission granted by the Regulator for the delayed submission; the National Ports Authority ("NPA" / "the Authority") submitted to the Ports Regulator of South Africa (''the Regulator") its Tariff Application ("the Application") in terms of Section 72 of the National Ports Act, 12 of 2005, on 16 August 2021. The NPA applied for an average tariff increase of 23.96% for the period 01 April 2022 to 31 March 2023, together with indicative tariffs of 1,81% for the period 01 April 2023 to 31 March 2024 and 2.45% for 01 April 2024 to 31 March 2025.**
- **After considering the application and submissions made by all of the stakeholders during the consultation period, and based on latest available data, the Regulator has concluded that an appropriate overall increase in average tariffs for the financial year 2022/23 is 4.8%. In particular:**
    - **Marine services and related tariffs (Sections 1-8 of the Tariff Book, excluding Section 7 that deals with cargo dues) are to increase by 12%;**
    - **All container cargo dues are to remain unchanged;**
    - **Dry Bulk Coal export cargo dues to increase by 11%;**
    - **Dry Bulk Magnetite export cargo dues to increase by 15%;**
    - **RoRo export Cargo Dues are to remain unchanged;**
    - **All Liquid Bulk cargo dues are to remain unchanged; and**
    - **All other tariffs below the upper caps are to increase by 4.2% in line with expected inflation to a maximum of the existing upper cap.**
- **All marine tariffs (Sections 1-8 of the Tariff Book, excluding Section 7 that deals with cargo dues) for existing commercial South African flagged vessels as well as commercial vessels registered in South Africa from 2019/20, will receive a 30% discount applicable year on year up to 31 March 2023.**

- **All license fees will continue to be discounted by 30%, and all license fees (Tariff) applicable per port for the tariff year 2022/23, can continue to be paid in equal installments on an annual basis over the period of the license.**
- **In support of the Government's continued economic response to the Covid-19 pandemic, for the 2022/23 tariff year, as per section 4.1.1. of the Tariff Book a continued reduction of 35% in port dues applicable will be allowed in the following instances:**
  - **Vessels not engaged in cargo working for the first 30 days only;**
  - **Bona fide coasters;**
  - **Passenger vessels; and**
  - **Small vessels resorting under Section 4, Clause 2 when visiting a port other than their**
    - **registered port; or**
    - **vessels in port for longer than 30 days not engaged in cargo working or undergoing repairs will be liable for a 20% surcharge on the incremental fee of port dues."**

**Further, a reduction of 60% will continue to be allowed to vessels calling for the sole purpose of taking on bunkers and/or stores and/or water or a combination of all three, provided the vessel's entire stay does not exceed 48 hours. This reduction will not be enjoyed in addition to the 35% reduction granted for vessels not engaged in cargo working for the first 30 days only, bona fide coasters, passenger vessels and small vessels resorting under Section 4, Clause 2.**

## 1 THE TARIFF APPLICATION

1.1 Following delays owing to the IT system attack on Transnet and permission granted by the Regulator for the delayed submission, the National Ports Authority ("NPA" / "the Authority") submitted to the Ports Regulator its Tariff Appliation ("the Application") on 16 August 2021. The Application requested an average tariff increase of 23.96% for the 2022/23 tariff year, however the NPA requested the use of R1.25 billion of the Excessive Tariff Increase Margin Credit (ETIMC) facility in order to reduce the proposed tariff to 9.40%.

1.2 In addition, and in line with the Tariff Methodology of March 2020, the NPA has applied for an indicative average tariff of 10.31% and 7.15% for 2023/24 and 2024/25 respectively. This follows an application of 19.74% for 2021/22, after which the Ports Regulator approved an average tariff increase of 0%.

*Table 1: Overview of NPA Tariff Application and Previous Decisions (R million as applicable)*

| NPA Tariff Application | | | | | |
|---|---|---|---|---|---|
| **WACC** | **Previous Year (21/22)** | | **Current Tariff Application** | | |
| **Year** | **Tariff Application 2021/22** | **ROD 2021/22** | **2022/23** | **2023/24** | **2024/25** |
| Risk-Free Rate (nominal) | 8.95% | 9.18% | 9.33% | 9.33% | 9.33% |
| Real Risk-Free Rate | 4.97% | | 4.77% | 4.61% | 4.74% |
| MRP | 5.09% | 5.09% | 5.10% | 5.10% | 5.10% |
| Asset Beta | 0.35 | 0.35 | 0.35 | 0.35 | 0.35 |
| Equity Beta (using Hamada) | 0.65 | 0.65 | 0.60 | 0.60 | 0.60 |
| Gearing | 50% | 50% | 50% | 50% | 50% |
| Debt/Equity Ratio | 100% | 100% | 100% | 100% | 100% |
| Cost of Debt | 10.85% | 10.85% | 6.14% | 5.97% | 6.10% |
| Inflation Forecast | 3.8% | 4.4% | 4.35% | 4.51% | 4.38% |
| Tax Rate | 14.03% | 14.03% | 28% | 28% | 28% |
| Real Vanilla WACC | 7.53% | 7.03% | 6.99% | 6.83% | 6.96% |
| **Revenue Requirements Calculation** | | | | | |
| Return on Asset | 5 500 | 3 130 | 5 549 | 5 660 | 6 082 |
| Depreciation | 2 280 | 2 280 | 2 560 | 2 604 | 2 585 |
| OPEX | 5 503 | 5 503 | 5 919 | 6 221 | 6 510 |
| Tax | 493 | 556 | 1 211 | 1 238 | 1 328 |
| **Total** | **12 165** | | | | |
| Claw- back | -146 | -567 | -355 | 7 | - |
| ETIMC | - | -1 201 | - | - | - |
| Allowable Revenue | 13 569 | 12 685 | 14 733 | 15 731 | 16 504 |
| Y/Y growth | 6.9% | | | | |
| Real Estate | -3 861 | -3 548 | 4 085 | 4 339 | 4 634 |
| Marine Business Income | 9708 | 9 059 | 10 648 | 11 391 | 11 870 |
| Prior year's Revenue | 7540 | 7 540 | | | |
| Volume Increase | 7.54% | 7 | 5.24% | 5.07% | 1.71% |
| **Average Tariff Increase Required** | **19,74%** | **0%** | **23.96%** | **1.81%** | **2.45%** |

## 2 THE PORT REGULATOR'S MANDATE

2.1 In considering the NPA's proposed tariffs, the Ports Regulator was guided by the National Ports Act No. 12 of 2005 ("the Act"); the Regulations[1] together with the Directives[2]; the Tariff Strategy of 2015 (updated in 2020); and the March 2020 Tariff Methodology applicable to the 2021/22 – 2023/24 tariff period, which incorporates the Methodology for the Valuation of the NPA's Regulatory Asset Base (published on 28 March 2018).

2.2 In the assessment of the Tariff Application; the Regulator further considered all subsequent submissions, written and oral comments, from stakeholders during the public consultation process, including the responses thereto, as well as information at the disposal of the Regulator and its own research. It must be noted that the information at the disposal of the Ports Regulator postdates the Application, and as such some differences between the calculations contained in this RoD and the Application are due to the updating of data and forecasts, including the inflation (CPI) forecast for 2022/23 as announced in the Medium Term Budget Policy Statement on 11 November 2021.

## 3 THE METHODOLOGY

3.1 In order to continuously improve the level of transparency and consistency in the tariff setting process, the Ports Regulator has, since its establishment, undertaken extensive consultations with all port stakeholders, including the NPA. These consultations have been, among others, in the form of road shows; meetings, and the receipt of formal submissions on the appropriate Methodology to be used.

3.2 An interim Methodology published on 13 August 2013 was applicable to the 2014/15 tariff year. This was followed by the first Multi-year Tariff Methodology published in August 2014 and applicable to the tariff period 2015/16-2017/18. Thereafter the second Multi-year Methodology, applicable to the 2018/19-20/21 tariff years, was published in March 2017. The third and current Multi-year Methodology was published in March 2020 and is applicable to the 2021/22 – 2023/24 tariff periods. It can be noted that a review of the current version of the Tariff methodology is due in the 2022/23 financial year.

3.3 The guidance provided within the Methodology is aimed at assisting the NPA with submitting an application with a three-year view thereby providing greater certainty to the NPA's investment decisions and to port users in their budgeting process. In addition, the Methodology assists stakeholders in formulating responses to the application which the Ports Regulator considers in its

[1] Regulations in terms of section 80(1) of the National Ports Act, Act No.12 of 2005 in Government Notice 1091, Gazette Number 30486 dated 23 November 2007.

[2] The Directives were promulgated in terms of Section 30(3) of the Act in Government Notice 825, Gazette No. 32480 dated 6 August 2009, and as amended in the Directives Amendment Notice, promulgated in Government Notice 37, Gazette No. 32898 on 29 January 2010.

decision-making process. The publication of the Methodology increases transparency, accountability, as well as regulatory certainty.

3.4 However, the Ports Regulator must retain a degree of regulatory discretion to respond to unforeseen economic or other events, effect corrections, address anomalies and unintended consequences of a strict application of the Methodology that may impact on the sustainability of the South African ports system. This has been captured in the Methodology and taken into account. Further, the Regulatory Framework has matured significantly over the period of regulation, and provisions which deals with previously ambiguous issues have been included.

3.5 In addition to the above, in March 2020, the Ports Regulator published a Methodology applicable over the next three years, which includes a Valuation of Assets ("VoA") Methodology (first published in March 2018) that sets out the manner in which the regulatory asset base ("RAB") is determined.

3.6 The Ports Regulator, in its November 2018 Record of Decision ("RoD"), allowed a varied implementation of this Methodology for the valuation of assets pending the implementation of Section 3(2) of the Act. This RoD continues to allow varied implementation of the VoA Methodology for the 2020/21 tariff period. However, the conditions for the varied implementation remain as set out in the 2019/20 RoD.

3.7 The Regulator will, upon corporatisation of the Authority, re-assess the applicability of the published Tariff Methodology, particularly with a view on the appropriate valuation approach of the Regulatory Asset Base. This will form part of the review of the Multi-year Tariff Methodology planned for 2022/23.

## 4 COMPLIANCE WITH THE DIRECTIVES, REGULATIONS AND NATIONAL PORTS ACT

4.1 The Tariff Application submitted by the Authority achieved procedural and substantial compliance with the Act, the Regulations, the Directives and the Methodology. The data contained within the Application as well as confidentially submitted information, was adequate for the purposes of calculating the revenue and the over/under-recovery.

4.2 Although late, the NPA submitted its Tariff Application, in line with the Methodology, which is based on the 'Revenue Requirement' approach. Further compliance requirements as outlined in the Directives, and the NPA's status in response, is set out below:-

4.2.1 Directive 22(3)(a) requires that the NPA shall set out "*the manner in which the tariffs have been calculated, and the model used by the NPA for determining and calculating the tariffs*." This has been fully complied with in this Application.

4.2.2 Directive 22(3)(b) requires that all "*operating costs, expenses and revenues incurred or generated from a port service or port facility, as well as the value of the capital stock relating to such services or facilities,"* are to be declared in the Application.

Concerns related to the lower levels of disclosure of financial information than in previous applications was apparent, creating difficulty for the Ports Regulator to conduct a more thorough assessment related to past financial information. As the Regulator did not receive the NPA's Audited Annual Financial Statements (AFS) in time for the tariff decision, the claw-back calculation for the 2020/21 tariff year will be re-assessed in the next (2023/24) tariff assessment commencing 1 August 2022.

The capital expenditure ("CAPEX") programme information provided by the NPA was suffiecient to make an assessment. As the CAPEX information is the subject of further extensive processes that are to be engaged by the Ports Consultative Committees (PCC) and the National Ports Consultative Committee (NPCC), the Ports Regulator accepts the information provided for the purposes of this tariff application as an outcome of the PCC and NPCC processes, as well as a higher level of compliance by the NPA. In this regard, continued information requirements, as set out first in the 2015/16 and subsequent ROD's, shall continue to apply on a quarterly basis.

Concern is raised regarding the under expenditure on CAPEX, a key component of the sustainability of the port system. Again, it is very clear that, in spite of a clear regulatory incentive to increase CAPEX spending (re: the Revenue Required Methodology) the NPA has consistently failed to execute the full CAPEX program as allowed for by the Regulator.

The Regulator intends on placing a continued and increased focus on the Authority's CAPEX underexpenditure. Thus, the Regulator shall, among other inititatives, carry out capital works-in-progress (CWIP) assessments; closely monitor the expenditure improvement program; periodically conduct meetings at respective ports; and receive reports from the NPA that include technical skills and capacity and planning and supply chain processes impacting CAPEX implementation. The NPA shall also be required from now on to list all costs associated with CWIP that resulted in no commissionable assets or assets that have been (or are expected to be) written off. A detailed list is required per project.

4.2.3 Directive 22(3)(c) requires that "the amounts to be invested and revenues to be utilised in port development, safety, security and environmental protection", must be set out, as well as "*(i) the manner in which the tariffs will affect the cost of doing business in the ports*; *(ii) the proposed profit margin or rate of return, together with the motivation to show why this margin or return is commensurate* with risk; and (iii) the manner in which the factors set out in directive 23 apply to the proposed tariffs.".

Port development initiatives, investments, and revenues have been addressed. In addition, safety, security, and environment protections costs / investment objectives have been addressed. Thus, the requirement as per the Directive 22(3)(c) has been met.

*4.2.4* Directive 22(6) requires that "*the Authority shall maintain such accounting and financial systems as are necessary for the Regulator to verify the pricing principles and models used by the Authority to determine and calculate its tariffs*".

The generalised corporate level of information, including audited financial statements from Transnet Group, were sufficient for the purposes of the analysis, however, the claw back calculation for 2020/21 will be reviewed in the next tariff assessment per as per 4.2.2 as the 2020/21 AFS only became avaialbe on the 14$^{th}$ of December 2021.

4.2.5 Directive 23 (1): *In considering the proposed tariffs in terms of Directive 22, the Ports Regulator must have regard to whether the proposed tariffs reflect and balance the following considerations*: -

a) *A systematic tariff methodology that is applicable on a consistent and comparable basis:*

The NPA has submitted an application that takes into account the outcomes of the published Tariff Strategy and in line with the requirements set out in the 2020/21 RoD as well as the Methodology. This requirement has been met.

b) *Fairness:*

The Ports Regulator, in conjunction with the Authority, has made great strides in achieving increased levels of fairness in the port tariff structure with the implementation of the Tariff Strategy, as published on 31 July 2015, and updated in 2020. Through the tariff amendments included in this RoD as well as in previous tariff determinations, the Ports Regulator attempts to address some of the most glaring of these imperfections. However, the full implementation of the Tariff Strategy will give effect to Directive 23(1)(b) more comprehensively.

c) *The avoidance of discrimination, save where discrimination is in the public interest and fair:*

The Tariff Strategy as well as the Port Tariff Incentive Programme (PTIP) deals with the concept of discrimination in the public interest. No PTIP applications were received for consideration for the 2022/23 tariff period. This requirement has been met.

d) *Simplicity and Transparency:*

The NPA has made significant strides in improving the levels of transparency However challenges arose in the submission of Annual Financial Statements

The requirement has been partially met.

e) *Predictability and stability:*

The maturity of regulation in the SA port industry has resulted in a tariff process that is both predictable and stable. This requirement has been met.

f) *The avoidance of cross-subsidisation save where cross subsidisation is in the public interest:*

The Tariff Strategy has set out the manner in which cross subsidisation will be addressed. The Ports Regulator will continue to guide the NPA in this regard, including the continued implementation of the PTIP which sets out a framework for the application and approval of cross-subsidies and the level thereof that would be considered to be affordable and in the public interest.

This requirement has been met.

g) *The promotion of access to ports and efficient and effective management and operations in ports:*

The information provided in the application was not sufficient to determine compliance with this provision. Although this is not clearly stated in the Application, the internal processes of the NPA, including the Section 56 and 57 processes of the Act and the processes that the NPA is undergoing in the PCCs, address some but not all of the concerns that arise under this provision. The other issues that remain outstanding will be addressed in the disclosure components of the Tariff Methodology as well as in the Ports Regulator's compliance and monitoring processes. In this regard, Section 11 of this RoD outlines future information reporting requirements by the NPA to the Ports Regulator.

Further, it is imperitive that Section 3(2) of the Act dealing with the corporate form of the NPA be implemented in order for it to be effective in regulating operators to achieve efficiency and effectiveness in the port system.

## 5 THE APPLICATION SPECIFICS

5.1 The submitted Application is based on the Required Revenue Methodology, as contained within the Methodology, and was assessed using same. The following formula was used in the calculation of the Required Revenue:

***Revenue Requirement = (cost of capital x Regulatory Asset Base (RAB)) + operating costs + depreciation + taxation expense ± claw-back ± ETIMC ± WEGO***

5.2 This approach accords with rate-of-return revenue requirement calculations by most Regulators in South Africa and internationally (as modified in the ports regulatory practice over time) and has been used as the basis for assessments in preceding Applications.

5.3 The standard exposition is:

**RR = (v – d + w) r + D + E + T +/- C +/-ETIMC +/-WEGO**

*Where:*

| | | |
|---|---|---|
| *RR* | = | *Revenue Requirement* |
| *v* | = | *value of the assets used in the regulated services* |
| *d* | = | *accumulated depreciation on such assets* |
| *w* | = | *working capital* |
| *r* | = | *return on the capital reasonably expected* |
| *D* | = | *depreciation accounted for in the period of the tariff* |
| *E* | = | *operating expenses* |
| *T* | = | *taxation expense* |
| *C* | = | *Claw-back* |
| *ETIMC* | = | *Excessive Tariff Increase Margin Credit* |
| *WEGO* | = | *Weighted Efficiency Gains from Operations* |
| *(v – d + w)* | = | *Regulatory Asset Base* |

5.4 The Regulated Asset Base (RAB)

5.4.1 The regulatory asset base contained within the Application is as follows:

***Table 2: NPA Regulatory Asset Base Calculation (R million)***

| Table 2: NPA RAB calculation | | | | | |
|---|---|---|---|---|---|
| | Tariff Application | ROD | Tariff Application | | |
| | 2020/21 | 2020/21 | 2022/23 | 2023/24 | 2024/25 |
| Opening RAB Value | 73 170 | 73 015 | 78 447 | 81 792 | 85 587 |
| Inflation Index | 3 581 | 3 516 | 3 452 | 3 733 | 3 823 |
| Indexed Opening Asset Base | 76 751 | 76 531 | 84 353 | 88 191 | 93 835 |
| Add CAPEX | 3 872 | 3 872 | 2 454 | 2 666 | 4 425 |
| Less Depreciation | -2 331 | -2 321 | -2 560 | -2 604 | -2 585 |
| Closing RAB value | 78 388 | 78 081 | 81 792 | 85 587 | 91 250 |
| Average Opening and Closing | 75 779 | 75 548 | 80 119 | 83 689 | 88 418 |
| Less Working Capital | -2 306 | -2 306 | -738 | -770 | -988 |
| RAB Final | 73 473 | 73 242 | 79 382 | 82 920 | 87 431 |

5.4.2 The Ports Regulator has assessed the opening balance for the 2022/23 tariff year of R78 447million.

5.4.3 The components of the RAB calculation, as per the Tariff Assessment, are set in Table 3 below with a RAB value of R78 718 million calculated for the 2022/23 tariff year.

***Table 3: Regulatory Assessment of the Regulatory Asset Base (R million)***

| Regulatory Assessment of the Regulatory Asset Base (R million) | |
|---|---|
| **FY 2022/23** | **RAB** |
| Opening Net Book Value | 78 447 |
| Indexing | 3 295 |
| Less: Depreciation | -2 556 |
| Add: CAPEX | 2 454 |
| Closing NBV | 80 464 |
| Average Opening and Closing | 79 456 |
| Less: Working Capital | -738 |
| **RAB Final** | **78 718** |

5.5 Cost of Capital

5.5.1 The NPA's Application follows the Capital Asset Pricing Methodology ("CAPM") in order to determine the cost of capital, as per the requirements of the Regulatory Manual. The NPA used the Vanilla Weighted Average Cost of Capital ("WACC") approach and calculated 6.99%, 6.83% and 6.96% for the tariff years 2022/23, 2023/24 and 2024/25 respectively.

5.5.2 As per the Tariff Model, the real vanilla WACC for 2022/23 was calculated at 7.16%, and 6.55% and 6.55% for the outer years. The difference can mainly be ascribed to the updated inflation forecast.

5.6 Cost of Equity

5.6.1 The Methodology sets out the calculation of the Cost of Equity. The Application, in line with the Methodology, contains a real post-tax cost of equity of 7.84%. Using an updated inflation forecast, the assessment calculated a real post-tax cost of equity of 8.02%. The result thereof is a total calculated return on equity of R3 158 million available to the NPA as profit/maximum dividend, as opposed to the R 3 113 million requested.

5.7 Risk Free Rate (RFR)

5.7.1 As per the Methodology, the South African Reserve Bank's ("SARB") published time series KBP2003M (Yield on loan stock traded on the stock exchange: Government bonds - ten years and over) is used for the calculation of the RFR. The series is seen to adequately reflect the market's perception of sovereign risk and inflation over the regulatory period. The RFR is calculated as a monthly average over a sixty month period in order to avoid possible anomalies contained within a shorter single data series bond.

5.7.2 The nominal RFR used in the NPA 2022/23 Application is 9.33%. The latest SARB data available, at the time of assessment, is for the period September 2016 – August 2021. The resultant nominal risk free rate is 9.37%.

5.8 Beta Co-efficient

5.8.1 The Methodology sets out an asset beta of 0.35, which equates to an equity beta of 0.65. The Hamada equation is used to re-lever the beta taking into account the equitable tax rate of the Authority.

5.9 Market Risk Premium

5.9.1 As per the Methodology, and the latest available Dimson, Marsh and Staunton ("DMS") data, a market risk premium of 5.10% was calculated, which is the same as contained within the Application.

5.10 Gearing

5.10.1 The gearing used in both the Tariff Application and the Tariff Assessment was 50%, as per the requirements of the Methodology.

5.11 Cost of Debt

5.11.1 The Nominal Weighted Average Cost of Debt ("WACD") contained in the Application was 10.75% and same was used in the assessment thereof. The resultant Real WACD is 6.29%.

5.12 Inflation

5.12.1 The National Treasury inflation forecast, as per the November 2021 Medium Term Budget Policy statement (MTBPS), was used; viz. 4.20% for 2022/23, 4.80% for 2023/24, and 4.80% for 2024/25.

5.13 Operating Costs

5.13.1 The NPA's Application contains a figure of R 5 917 million for operating expenditure ("OPEX") for the 2022/23 financial period, including group costs of R 485 million.

5.13.2 Port users have expressed concern regarding the need for the NPA to implement cost-saving measures under the current economic conditions. The Ports Regulator supports the views of port users.

5.13.3 The NPA OPEX is analysed on a line item basis during the course of the tariff assessment process and trends are taken into consideration. The under-spending (R919 million) during the previous tariff period has, as per existing practice, been clawed back. The Ports Regulator continutes to urge the Authority to implement cost-saving measures as well as implement its maintenance plans in order to maximise port efficiency and minimise downtime. The impact of unintended expenditure due to the pandemic will be addressed through the clawback mechanism in the next tariff application.

5.14 Capital Expenditure

5.14.1 Concern is raised regarding the under-expenditure on CAPEX, a key component of the sustainability of the port system. It is very clear that, in spite of a clear regulatory incentive to increase CAPEX spending (the Revenue Required Methodology) the NPA is incapable of implementing the required investements as allowed for by the Ports Regulator.

5.14.2 As such the Ports Regulator will conduct capital works-in-progress inspections as well as meetings with port managers on skills and capacity impacting the lack of implementation on the CAPEX program as allowed.

5.14.3 For the 2022/23 tariff period, the Ports Regulator has allowed the Authority to earn a return on R2 454 million of capital infrastructure and equipment and will closely monitor the implementation thereof.

5.15 Depreciation

5.15.1 The Tariff Assessment has resulted in a depreciation allowance of R 2 556 million for the 2022/23 tariff year.

5.16 Taxation Expense

5.16.1 Previously, due to the non-corporatised nature of the NPA, the "equitable share of Transnet tax" tax rate based on the NPA status as a division in the larger Transnet Group was utilised in the tariff assessment process. This is consistent with the Tariff Methodology published in 2016/17, and again in 2019/20. However, due to the recently announced corporate structure and the contents of the Tariff Methodology, the Regulator will accept the corporate tax rate of 28% which is in line with the Application as submitted by the Authority.

5.16.2 The actual tax allowance for the 2020/21 tariff year is R0.00 due to Transnet making a loss and as such, no tax liability for the group or any of its divisions occurred.

5.17 Volume Adjustments

5.17.1 A volume based cargo revenue growth forecast for 2022/23 of 7.84% was used in the Tariff Assessment process. This figure reflects the latest 2021/22 estimates as well as an updated forecast. This is based on the anticipated base effects due to continued suppressed demand and low efficiencies from Transnet resulting in lower volumes than expected for the financial year 2021/22.

## 5.18 Claw-back

5.18.1 As the 2020/21 tariff year is now complete, the Ports Regulator can make the final adjustments to the impacts of any forecasts and recoveries for that year, resulting in a revised total claw-back of R 368 million in favour of port users.

***Table 4: Claw-back Calculation (R million)***

| Claw-Back Calculations | R'm |
|---|---|
| Re-computed Revenue Requirement 2020/21 (adjusted for the equitable tax rate) | 12 077 |
| Clawback: 2020/21 | (185) |
| NPA Application 2020/21 AFS Revenue | 11 558 |
| Bilateral Agreements | (92) |
| 2020/21 AFS Revenue (adjusted for Bilateral Agreements) | 11 650 |
| Return on Claw-back FY 2020/21 | (38) |
| Provisional allowed in ROD FY 2021/22 for 2020/21 | (764) |
| Final Claw back FY 2020/21 | (337) |
| Allowed Revenue per ROD FY 2021/22 (adjusted for equitable tax rate) | 11 970 |
| Latest Estimate Revenue | (11 956) |
| Estimated Claw-back | 14 |
| 50% Claw back Adjustment in FY 2022/23 | 7 |
| Claw-back FY 2020/21 | (375) |
| **Net Claw-back FY 2022/23** | **(368)** |

*Note: '(-)' indicates claw back to users '+' indicates claw back to NPA*

5.18.2 A provisional claw-back (in favour of port users) of R 764 million was made in the 2021/22 tariff year, resulting in a residual claw-back of R 337 million. The return on the residual claw-back in terms of the WACC rate for that period totals R 23 million.

5.18.3 The expected claw-back (in favour of port users) calculated for the 2021/22 tariff year is R 14 million. A provisional claw-back (in favour of the NPA) of R 7 million, as well as the residual claw-back of R 375 million for the tariff year 2021/22, results in a total claw-back of R 368 million in the 2022/23 tariff year. (Please note: Differences due to rounding).

5.18.4 The claw back calculated includes an adjustment for actual taxation expense through the calculation of the "equitable" tax rate as per section 5.16.

5.19 Excessive Tariff Increase Margin Credit (“ETIMC”)

***Table 5: ETIMC Calculation (R million)***

| **Transaction type** | **R million** |
|---|---|
| 2012/13 ETIMC retained | 900 |
| 2012/13 WACC return on ETIMC (average ETIMC across year) | 20 |
| 2013/14 ETIMC opening total | 920 |
| 2013/14 Estimated ETIMC retained in 2013/14 | 1 378 |
| 2013/14 ETIMC closing total | 2298 |
| 2013/14 Average ETIMC | 1609 |
| 2013/14 WACC return on ETIMC | 60 |
| 2013/14 ETIMC closing balance | 2 358 |
| 2014/15 Average ETIMC | 2 358 |
| 2014/15 WACC return on ETIMC | *108* |
| 2014/15 ETIMC closing balance | 2 466 |
| 2015/16 ETIMC Utilised | -150 |
| 2015/16 WACC Return on ETIMC | 108,5 |
| 2016/17 WACC return on ETIMC | 112 |
| 2016/17 ETIMC Total | 2 537 |
| 2017/18 WACC Return on ETIMC | 110 |
| 2017/18 ETIMC Utilised | -681 |
| 2017/18 ETIMC Total | 1 966 |
| 2018/19 WACC Return on ETIMC | 147 |
| 2018/19 ETIMC retained | 345 |
| 2018/19 ETIMC Total | 2 458 |
| 2019/20 WACC Return on ETIMC | 161 |
| 2019/20 ETIMC Retained | 539 |
| 2019/20 ETIMC Total | 3 158 |
| 2020/21 WACC Return on ETIMC | 211 |
| 2020/21 ETIMC Utilised | -567 |
| 2020/21 ETIMC Total | 2 802 |
| 2021/22 WACC Return on ETIMC | 149 |
| 2021/22 ETIMC Utilised | -1 201 |
| 2021/22 ETIMC Total | 1 750 |
| 2022/23 WACC Return on ETIMC | 83 |
| 2022/23 ETIMC Retained / Utilised | -1 188 |
| **2021/22 ETIMC Total** | **645** |

5.19.1 The Ports Regulator regulates in the long-term interest of the industry and therefore should not confine itself to the immediate tariff decision, but should also consider ways to ease any future shocks or tariff spikes to the system which can be managed sustainably. It is thus considered prudent to retain the Excessive Tariff Increase Margin Credit (“ETIMC”) inside of the NPA through a revenue adjustment in a tariff period as the ETIMC may be used to offset tariff increases. Table 5 above sets out the calculation of the ETIMC and the resultant value at the end of the tariff year.

5.19.2 The creation and inclusion of the ETIMC in the Methodology was with the intended purpose to assist in smoothing tariffs when, due to an expected spike in tariffs, tariff increases would have been excessively high. Whilst no one could predict the pandemic and the impact it would have on port volumes, the effect and impact on port tariffs is similar. We are therefore in a position to utilise the ETIMC facility in order to provide much needed relief to port users. R1.188 billion will therefore be utilised in the 2022/23 tariff year.

## 6 REQUIRED REVENUE AND TARIFF INCREASE

6.1 The application of the above amendments and adjustments to the NPA 2021/22 Application has the following result:

*Table 6: Assessment Results (R million)*

| Assessment Results (R million) | |
|---|---|
| **Transaction Type R Million** | **2022/23** |
| WACC Return | 5 632 |
| Depreciation | 2 556 |
| Operating Expenses | 5 919 |
| Tax Expense | 1 228 |
| Claw Back | -368 |
| ETIMC | -1 188 |
| WEGO | -152 |
| NPA Required Revenue 2022/23 | 13 627 |
| NPA Required Revenue 2022/23 without ETIMC | 14 815 |
| Real Estate Business Income | -4 085 |
| Required Revenue from Marine Tariffs | 9 542 |
| Estimated Marine Business Income | 9 109 |
| **Revenue Deficit 2020/21** | **433** |

6.2 The marine business income that is forecast above is the current tariff book marine revenue modelled for a weighted average revenue volume growth rate of 6.67% for all cargo types and marine services for the period.

6.3 The following assumptions are included in the tariff assessment:

| | |
|---|---|
| Risk Free Rate (Nominal) | 9.37% |
| Market Risk Premium | 5.09% |
| Gearing | 50% |
| Beta Coefficient (unlevered) | 0.35 |
| Revenue Effect of Volume growth 2020/21 | 7.84% |
| Inflation | 4.20% |

## 7 TARIFF DIFFERENTIATION

7.1 The NPA requested specific tariff increases in addition to the general adjusted tariff increase of 9.40% as follows:

- An average 17.83% increase for Marine Services tariffs applicable to shipping lines; and
- An average 5.47% increase for cargo dues tariffs differentiated as follows:
  - 3.10% on Containers Imports & Exports;
  - 9.40% on Break Bulk Imports and Exports;
  - 9.40% on Dry Bulk Imports and Exports;
  - 12.00% on Coal & Magnetite Exports;
  - 9.40% on Liquid Bulk Imports and Exports;
  - 0% on Automotives Imports & Exports.

7.2 Based on the assessment of the Tariff Application, the volume forecast, independent research, as well as stakeholder engagement, the following amendments are to be applied to the Tariff Book for the 2022/23 tariff period:

**An overall increase in average tariffs for the financial year 2022/23 of 4.8%.**

**In particular**:

- **Marine services and related tariffs (Sections 1-8 of the Tariff Book, excluding Section 7 that deals with cargo dues) are to increase by 12%;**
- **All Container cargo dues are to remain unchanged;**
- **Dry Bulk Coal export cargo dues to increase by 11%;**
- **Dry Bulk Magnetite export cargo dues to increase by 15%;**
- **RoRo export cargo dues are to remain unchanged;**
- **All Liquid Bulk cargo dues are to remain unchanged; and**
- **All other tariffs below the upper caps are to increase by 4.2% in line with expected inflation to a maximum of the existing upper cap.**

- ❖ **All marine tariffs (Sections 1-8 of the Tariff Book, excluding Section 7 that deals with cargo dues) for existing commercial South African flagged vessels as well as commercial vessels registered in South Africa from 2019/20 will receive a 30% discount applicable year on year up to 31 March 2022.**
- ❖ **All licence fees will be continue to be discounted by 30%, and all licence fees (Tariff) applicable per port for the tariff year 2022/23, can continue to be paid in equal installments on an annual basis over the period of the license.**
- ❖ **In support of the Government's continued economic response to the Covid-19 pandemic, for the 2022/23 tariff year, as per section 4.1.1. of the Tariff Book a continued reduction of 35% in port dues applicable will be allowed in the following instances:**

- o **Vessels not engaged in cargo working for the first 30 days only;**
- o **Bona fide coasters;**
- o **Passenger vessels; and**
- o **Small vessels resorting under Section 4, Clause 2 when visiting a port other than their**
    - **registered port; or**
    - **vessels in port for longer than 30 days not engaged in cargo working or undergoing repairs will be liable for a 20% surcharge on the incremental fee of port dues."**

**Futher, a continued reduction of 60% will be allowed to vessels calling for the sole purpose of taking on bunkers and/or stores and/or water or a combination of all three, provided the vessel's entire stay does not exceed 48 hours. This reduction will not be enjoyed in addition to the 35% reduction granted for vessels not engaged in cargo working for the first 30 days only, bona fide coasters, passenger vessels and small vessels resorting under Section 4, Clause 2.**

7.3 In line with the Multi-Year Tariff Methodology of March 2020 the Ports Regulator projects that the indicative overall average tariff adjustment for the 2022/23 and 2023/24 tariff years will be within the 3-6% inflation target band.

7.4 Due to the subdued outlook of economic activities over the tariff period, the Ports Regulator will, if required, use the ETIMC to maintain overall average tariffs close to the inflation target band, as defined by the SARB Mandate.

7.5 It is the Ports Regulator's view that, in due course, the comprehensive restructuring of port tariffs, through the full implementation of the Tariff Strategy shall more accurately address the price anomalies evident in the tariff structure.

## 8 TARIFF STRATEGY IMPLEMENTATION

8.1 The Tariff Strategy sets out guiding principles for setting the base tariff for the various categories of port users. These guiding principles aim to introduce a more flexible approach to facilitating pricing in the ports sector than what was proposed earlier. This is in order to establish an appropriate level of tariffs that better reflects the underlying costs based on use and benefit. These principles are aimed at enforcing transparency and certainty.

8.2 The implementation of the Strategy and its principles is meant to bring real benefit to customers through charging cost reflective tariffs. On this basis, those customer categories currently over-charged would see tariffs reduced, whereas those categories that are currently subsidized (under charged) would see their tariffs rebased to a fair level. These principles must be taken into consideration during the gradual adjustment of the Tariff Book over the period up to and beyond 2026/27.

8.3 Updated base rates for the tariff year are published in the RoD in order to provide a continuous update of the implementation of the Tariff Strategy and the changes to base tariffs due to changes in port structure, asset values and volume forecasts etc.

8.4 These tariffs, as set out in Table 7 below provide an indication of the tariff trajectory during the implementation period, in current terms. Over the implementation period, tariffs will converge towards these annually updated base rates. For example, a dry bulk tariff above the dry bulk base rate will gradually, as conditions allow, converge towards the R 6.39 in today's prices, unless there is significant change in the infrastructure, capacity, or underlying costs attributable to the different categories.

*Table 7:Tariff Strategy Base Rates*

| Tariff Strategy | Updated Tariff Strategy "base rate" | 2021/22 ROD based NPA tariff book rate | |
|---|---|---|---|
| Cargo Type | i.e. target tariff to be achieved over ten year implementation | Import | Export |
| Break Bulk | R 61.16 | R 8.98 - R 31.50 | R 4.48 - R 31.50 |
| RoRo's (p/m) | R 58.11 | R 168.94 | R 66.65 |
| Liquid Bulk | R 18.11 | R 7.06 - R 37.00 | R 3.60 - R 37.00 |
| Dry Bulk | R 6.39 | R 6.32 – R18.00 | R 4.16 – R18.00 |
| Containers | R 162.85 | R 1 874.14 | R 412.15 |

8.5 No distinction is made between inbound and outbound tariffs in the 'Tariff Strategy base rate' as any deviation from the base rate should clearly indicate whether a tariff rate is subsidising other rates, i.e. above the base rate, or being subsidised, or below the base rate.

## 9 CHANGES TO THE TARIFF BOOK

9.1 The Application proposed changes to the wording in the Tariff Book as well as amendments to certain clauses. These proposals are contained in Annexure E of the Application (Page 89 of 90).

9.2 The amendments contained (Issue 1 – Issue 8) are approved for inclusion in the 2022/23 Tariff Book.

9.3 Port users are urged to take note of these amendments.

## 10 WEIGHTED EFFICIENCY GAINS FROM OPERATIONS (WEGO)

10.1 The NPA achieved a preliminary composite port efficiency loss of 9.37% in the 2020/21 financial year. This results in a WEGO adjustment of R 152 million in favour of port users. The Regulator will, on an ongoing basis and in consultation with port stakeholders, refine its performance audits in relation to WEGO results and any changes to the preliminary WEGO allowance will be dealt with through the claw-back mechanism.

10.2 The Ports Regulator will engage with the NPA and the PCC's of the respective ports on KPIs and weights for the 2022/23 tariff year, including adopting landside measures before the end of February 2022.

## 11 INFORMATION AND REPORTING REQUIREMENTS

11.1 The Ports Regulator continues to expand its monitoring role and as such requires **quarterly** progress reports from the NPA (as per the Ports Regulator's templates). Based on the provisions of Regulation 16(2), as well as Directive 22, the NPA is required to submit to the Regulator the following:

11.1.1 All CAPEX projects (infrastructure and capital acquisitions) underway (to include, but not limited to, information pertaining to project stage, tender specifics, construction progress etc.); itemisation of Contractors and Consultants with regard to NPA projects undertaken by TGC/TCP in the prescribed CAPEX Register;

11.1.2 All acquisition of land and other capital assets (including motivation thereof);

11.1.3 All disposal/or removal of land and assets (including motivation thereof);

11.1.4 Lease Register setting out all lease information;

11.1.5 List of all land paid for by the NPA/port users funds, transferred to Transnet properties or any other division of Transnet;

11.1.6 Copies of all new agreements and licences entered into or issued in the quarter, as well as the supporting documentation thereof, including Sections 79s, 72s, 56s, 57s, and lease agreements (inclusive of all annexures, including but not limited to updated rentals and terminal operator tariffs);

11.1.7 All applicable B-BBEE certificates for the abovementioned licences and agreements as well as CAPEX projects;

11.1.8 Data, results and progress reports applicable to the implementation and monitoring of operator performance standards, as per TOPS/ MOPS/ ROPS/ HOPS; the Weighted Efficiency Gains from Operations (WEGO) and the down-time adjustment factor;

11.1.9 Itemized maintenance schedules for the next three years for all planned and unplanned maintenance projects above R1 million, categorized as OPEX as well as "capitalized maintenance";

11.1.10 All NPA relevant annual debt stock levels, annual debt redemption payments itemised, as well as the relevant debt instruments and applicable interest/coupon rates;

11.1.11 Key performance indicators relating to port capacity, port performance, volumes and maintenance programmes per port;

11.1.12 All due diligence and other information pertaining to the implementation of Sections 3(2), 26, 27 and 28 of the National Ports Act;

11.1.13 All infrastructure assets on the NPA RAB, not operated by the NPA and for which the NPA does not charge an operator for rental / lease;

11.1.14 Compliance Risk Management Plans and its quarterly progress report for all mandatory legislative provisions in the National Ports Act; and

11.1.15 All costs associated with CWIP that resulted in no commissionable assets or assets that have been (or expected to be) written off. A detailed list is required per project.

11.2 All quarterly progress information must be submitted to the Ports Regulator by no later than the end of the month after the end of the applicable quarter, based on the reporting templates provided to the NPA by the Ports Regulator on 16 March 2016 or as amended. The Ports Regulator reserves the right to amend these on an ongoing basis.

11.3 The Ports Regulator remains bound by the confidentiality provisions of the directives.

11.4 The Ports Regulator strives to assure that all information, including internal, third party, personal and electronic data, is treated with complete confidentiality; maintain integrity of all such information; ensure that our information system and the information contained therein meet the needs of our core and supporting business operations; comply with all applicable statutory and regulatory requirements and perform reliable access control to protect our information system against unauthorised access.

## 12 ANNUAL FINANCIAL STATEMENTS

12.1 As per current practice, a full set of audited annual financial statements must accompany all future tariff applications to the Ports Regulator, as well as port level financials. A full set of segmental financial statements of the Transnet Group must be included.

## 13 OVERARCHING STRATEGIES IN THE PORTS SYSTEM

13.1 Formal submission of all overarching strategies or policies, including but not limited to the following must be made to the Regulator by 31 March 2022:

13.1.1 Durban Hub and Container Strategy;

13.1.2 Island View Strategy;

13.1.3 NPA Transformation / B-BBEE Strategy;

13.1.4 All Group policies relating to the allocation of quantification of debt to the NPA;

13.1.5 Port Development Framework and Port Development Plans;

13.1.6 Ship Repair Strategy;

13.1.7 Updated Market Demand Strategy;

13.1.8 Rental and Leasing Strategy;

13.1.9 NPA Restructuring Plan.

*Please note: All information as stipulated above must be provided to the Ports Regulator in electronic format.

**Signature:** ______________________________ .

who warrants that he is duly authorised thereto

| | |
|---|---|
| **Name:** | Dr Tshisikhawe Victor Munyama |
| **Designation:** | Acting Chairperson: Ports Regulator of South Africa |
| **Date:** | 15 December 2021 |
| **Place:** | Durban |