



SIZA WATER REPORT

AUGUST 2021

1. INTRODUCTION

This report is prepared for the Dolphin Coast Ratepayers Association (DOCRRA) and seeks to answer the following questions:

- What is the history behind Siza Water and the recent court battle which Siza initially won and then recent lost at ConCourt?
- How do our water tariffs compare with Umgeni Water and our neighbors?
- Does Siza water generate profits and are they so much better in providing us with water as we think. Will that still be the case if there is a massive increase in tariff?
- What should the DOCRRA position be on this issue and what can we do to ensure a sustainable and good water deal for our community?

The report would not have been possible without the contribution of time and information by all those interviewed. In all instances, efforts have been made to ensure that views expressed have been captured correctly and that opportunities have been provided for comment on this as a working document in its earlier stages. I am sure more information will come the front once this document has been discussed.

2. HISTORY OF THE SIZA WATER CONTRACT AND COURT CASE

Siza Water (RF) (Pty) Ltd is a subsidiary of South African Water Works (SAWW), a South African utility company, focused on delivering quality and reliable water services to the communities and businesses its serv. SAWW manages two 30-year water concessions - Ballito (**Siza Water**) and Mbombela (**Silulumanzi**).

Siza was established on 28 September 1998, and they started their first contract with Dolphin Coast Municipality (later Illembe) on the 1 April 1999. The contract was signed for a period of 30 years and ends on the 31 March 2029.

2.1 HISTORY OF SIZA CONTRACT

In January 1999, the Borough of Dolphin Coast and Siza Water Company (SWC)- (with a controlling interest by SAUR Services of France) entered a contract whereby SWC would oversee, manage, and implement the provision of water and sanitation services within the then BODC Municipal boundary, on a concession basis, for a period of 30 years. The project had its origins in a decision by the BODC in 1996 that it was best able to meet its obligations with respect to Water and Sanitation Services (WSS) by seeking partnerships with the private sector. A three-year process then unfolded during which, with support from various government agencies and departments, the BODC investigated Public – Private Partnership (PPP) options, chose a preferred route and secured the interest of potential service providers.



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At the contract date, the net present value of the concession was estimated to be in the region of R386m (www.miiu.org.za). Due to legislation-induced local government restructuring, the BODC no longer exists as an entity and therefore the concession contract is now being managed by the Ilembe District Municipality.

It is interesting to note that in 2007 the Cascal Group acquired the stake SAUR Services had in Siza Water. Sembcorp then took over the shareholding from Cascal in 2010 and in November 2018 the newly formed South African Waterworks took over the shareholding from Sembcorp.

Currently the Siza Board consists of Shyam Misra (MD) Marcel Golding (NEC) Catherine Lloyd (NED) and Shitongwa Siame (NED).

South African Waterworks Board consists of Shyam Misra (MD) Marcel Golding (NEC) Catherine Lloyd (NED) and Shitongwa Siame (NED) and Mark J van Wyk (NED)

There were different opinions about the feasibility of outsourcing water supply. According to COSATU, "We have argued that we believe privatisation will be against the interests of the community, as well as against the interests of workers. Water is a public good, and as such must be left in public hands." (Cosatu and Samwu, 2003: p.16). Other stakeholders feel that policy is moving in the correct direction and that weaknesses and problems will be dealt with over time

Prior to the formation of the BODC in 1995, water and sanitation services in the area were managed by the Port-Natal Ebodwe Joint Services Board (JSB), and in some instances, by Umgeni Water. Umgeni Water is the regional water supply entity in the catchments supplying water to the Dolphin Coast area and has in many instances functioned as bulk supplier and service provider. The Port-Natal Ebodwe JSB was funded out of business levies and provided infrastructure investments in the greater Durban area – but outside the area that was under the former Durban City Council. As it (the JSB) had been responsible for infrastructure services related to water and sanitation, it also provided for the administration and management of the delivery of such services to customers in designated areas. However, with the implementation of the first phase of transitional local government arrangements, the JSB ceased to operate outside local government. It was under these circumstances that the BODC inherited water and sanitation systems that fell within its boundaries (with the exception of Umgeni Water infrastructure and assets for the supply of bulk water to the area).

With the formal incorporation of the BODC in 1996, Umgeni Water helped in provision of management relating to the water and sanitation services. However, projections in developmental growth (both in terms of high income and low-income residents), combined with the extremely poor state of existing bulk infrastructure, presented the BODC with a growing investment and management responsibility that it felt could best be met through seeking an alternative model. According to Hemson and Batidzirai (2002), in 1997 there were 3153 water meters in the BODC area, yielding a monthly income of R250 000.



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Monthly income from water services amounted to R271 000. Net income had been increasing steadily at a low rate. Services in areas other than the areas to the east of the coastal freeway, were limited and patchy. Some areas such as Shakashead had no services, whilst other areas had standpipes or borehole systems. This situation has drastically changed the past 5 years with the Greater Ballito area one of the most popular living destinations in the country.

There was substantial resistance to the concession as it was labelled as privatisation by the unions. The issue was also resisted by the community as there was a concern that prices would increase when water was sold for profit. There was also the perception from the community that a company would be more efficient and hard-line in implementing cut-offs for non-payment.

The agreement that was eventually signed can be summarised as follows:

“5.1.1. Subject to the terms and conditions of the Contract, the COUNCIL hereby grants to the CONCESSIONAIRE, the following exclusive right and authority during the term of this Contract to 5.1.1.1. process, use, manage, operate, occupy, and have free and unencumbered access to the Works.

5.1.1.2. redesign, upgrade and expand the Works

5.1.1.3. supply the Water Services directly to Customers

5.1.1.4. charge each Customer directly for the supply of Water Services and to apply all monies so collected as it deems fit; and

5.1.1.5. save as otherwise stated in this Contract, operate within the Concession Area as a private sector water services provider pursuant to the Water Services Act.”

About tariffs, the agreement stipulated that according to Section 40 of the concession agreement, “The determination, amendment and approval of all Tariffs shall be undertaken by the COUNCIL in accordance with all prevailing Regulatory Provisions and the provisions of this contract.” (Dolphin Coast - Siza Water Company, 1999: p.59). These tariffs were to be reflected in a negotiated tariff schedule which was attached to the agreement for the first year of operations. The agreement specifies that the tariff should include, “a lifeline tariff for a quantity of at least 6 (six) kl per Customer per month for a basic water service”.

This led to a triparty agreement being signed between Illembe, Umgeni Water and Siza. Illembe **signed as guarantor** for the obligations of Siza. Bad consumer debt is dealt with by Siza and they carry the financial risk of uncollectable consumer debt.

Until 2014, Siza had enjoyed annual tariff increases equivalent to those imposed on Umgeni’s other customers, which are all municipalities. In other words, until 2014, Umgeni adopted the same (blanket) price increase across the board for all its customers including Siza. However, in 2014, Umgeni applied a costing model which resulted in the formulation of a tariff increase of 41.4% for Siza and 8.3% for the municipalities including Illembe.



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The Minister and Umgeni state that the reason for the tariff increase, amongst other things, was the effect of the drought which befell the Province of Kwa-Zulu Natal, and which required it to mitigate its effects and reduce water disruptions.

In November 2014, Umgeni informed Siza of the proposed tariff increase whereupon Siza requested Umgeni to provide it with further information to enable it to make relevant submissions. The tariff increase was substantially higher for Siza. It was 41.4%, whilst the other bulk consumers' increase was 8.3%. Umgeni provided Siza with the details on comparable tariffs applicable to municipal customers and the rationale for the tariff increases. After the exchange of correspondence, Siza expressed its disagreement with the proposed tariff increase. Notwithstanding the dissatisfaction raised by Siza, on 23 January 2015, Umgeni applied to the Minister for the approval of the tariff increase for the financial year commencing on 1 July 2015. However, she reduced the tariff to 37.9% from the 41.4%

For obvious reasons, Siza was unhappy and expressed its dissatisfaction to Umgeni in several meetings held to discuss the matter. Siza held the view that it was being singled out for a higher tariff and that it was improper. Umgeni sought to explain the differentiation on the basis that Siza was a private company, performing a public function, and to whom different rules applied when it came to using its profits. Umgeni pointed out that Siza was free to use the profits made from the supply of water as it pleased, whereas the municipality water providers were obliged to spend their profits in improving infrastructure relating to water supply to communities.

(It is interesting to note here that the original motivation for the increase was to aid in drought relief that struck the KZN province at that time. In later arguments it was changed to a cross subsidization issue and profits Siza make – did somebody find out that Siza make excessive profits?)

Numerous court cases followed, and Siza won their case in the Supreme Court of Appeal to block the differentiated tariff increase. Umgeni Water appealed the matter to the Constitutional Court, and, on the 23 July 2021, the Constitutional Court rules as follows:

In applying the rationality test based on differentiation, the question that arises is whether there is a rational connection between the differentiation in question and the objectives sought to be achieved through the increased tariff. The legitimacy of those objectives cannot be disputed. And the rational connection between the means and the end has been established here. The direct consequence of the increased tariff was to abolish the cross-subsidy enjoyed by Siza and that tariff could have saved an amount of R10 million for Umgeni.

Questions like whether this saving would have made a material difference in the operation of other loss-making customers of Umgeni are not relevant to the rationality enquiry. And neither are issues like whether there were less onerous means or better ways which could have been followed to achieve those objectives. In Prinsloo, this Court emphasised:

“[A] person seeking to impugn the constitutionality of a legislative classification cannot simply rely on the fact that the State objective could have been achieved in a better way. As long as there is a rational relationship between the method and object it is irrelevant that the object could have been achieved in a different way.”

Since the discrimination complained of by Siza was based on the differentiation addressed above and to which the rationality test applied; it is not necessary to consider whether the differentiation in question amounted to unfair discrimination. This is so because the facts on record do not suggest that the differentiation rose to the level of unfair discrimination. Moreover, it is not clear from the present matter whether Siza is the bearer of rights guaranteed by section 9(3) of the Constitution.³⁷

Conclusion:

Siza lost the case on a technical issue around rationality and differentiation and not based on an abnormal increase. Umgeni won the appeal based on their negative opportunity cost position (R10m). The writer cannot find any evidence on how this R10m was calculated.

The changes are slim that Siza will be successful in an appeal against the judgement by the Con Court. This was confirmed by Advocate Wim Trengrove whom they consulted about an appeal.

I got the feeling from Siza’s management team that this court case is not a major concern for the future viability of the organization. They deal with the issues as they land on their table and continue with daily live.

3. WATER TARIFF COMPARISON – UMGENI WATER vs SIZA WATER

The data for this analysis was obtained from the annual service delivery reports of the two institutions.

It is quite a challenge to compare the tariff structures as Umgeni has a differentiated, sometimes complicated structure, whereas Siza has a simple one size fits all structure. Umgeni distinguish between domestic and commercial users, whereas Siza has a uniform tariff for all users. I have decided to compare the tariffs for households as this makes the most sense and will give one a feeling of the trends.

SIZA WATER			
	2020	2021	
Water Basic Charge Per Meter	156.3	188.75	20.76%
Special Residential Water Basic Charge Per Meter*	96.26	116.25	20.77%
0 to 10KL	0	0	0.00%
>10 to 30KL	18.91	22.8	20.57%
>30 to 40KL	24.65	29.75	20.69%
>40 to 50KL	39.25	47.7	21.53%
> 50KL	49.48	59.75	20.76%
Water Availability Charge	180.35	217.75	20.74%

UMGENI WATER			
	2020	2021	
Water Basic Charge Per Meter			
Special Residential Water Basic Charge Per Meter*			
0 to 6KL	0	0	0.00%
>6 to 25KL	21.7	23.6	8.76%
>25 to 30KL	29.68	32.2	8.49%
>30 to 45KL	65.45	71	8.48%
>45 KL	71.97	78.1	8.52%
Water Availability Charge	0	0	0.00%

It is clear from the above figures that Siza users have a far better deal than Umgeni users. Not only are Siza's prices lower than Umgeni's tariffs, but Siza users also get more kl water per category in comparison to Umgeni users. This is even more prevalent in the higher usage categories.

It is also clear that commercial users, because of the differentiated tariff structure of Umgeni, will pay significantly more for water than currently. There is a significant difference in join up costs and this can be explained by the fact that Siza do not pay for infrastructure development.

Siza claim that their maintenance of infrastructure is far better than what it used to be in the past – and this can be seen in a more reliable and better quality of water supply than in the past.



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In an interview with the management team of Siza Water they acknowledged that the perception that they do not contribute to infrastructure development is a big issue for them. They maintain that they cannot be held responsible for infrastructure development as the funding for these projects come from National Treasury. They feel that their maintenance of infrastructure contributes to water supply stability and nullify the lack of capital infrastructure development from their side. The major issue here at stake in terms of infrastructure development is the residents on the other side of the N2 – from Groutville up to Shakas Kraal. I feel that if Siza want to be successful in renewing the contract they need to find a solution for this. Otherwise, the political pressure might just kill the contract in any case.

The Con Court judgement will have an impact on water rates in the future. During an interview with the management team on the 22 September 2021, they said they are still waiting for a response from Umgeni Water. I picked up in the financial statements of Umgeni Water that there is outstanding debt of R43 m that Umgeni claims, Siza owes them.

Apparently, Umgeni Water increased their tariffs with the 37.9% from the date in 2015 and capitalized the increase as outstanding debt. It is clear that a higher-than-normal increase in tariffs is unavoidable. Siza Water will do all in its power to keep the increase as low as possible.

4. SIZA WATER PERFORMANCE ANALYSIS

Siza water is a private company, and its financial results are not publicly available. The following information was obtained from annual service reports and interviews with people who are working closely with Siza Water. It is clear that the driving forces that ensure success in private companies are also at play here:

- a) Significant less water loss than Umgeni. 15% vs 50%
- b) Despite a considerable investment programme to replace old pipes and re-engineer poorly designed sewer systems, problems have not been entirely dealt with. A far more active maintenance programme has thus been introduced which has meant far more problems are noticed on a regular basis and SWC management maintain that they are finally making inroads into breakdown reductions resulting from poor historic maintenance and investment. Regarding water quality and water loss measures, SWC now operates within accepted global norms and consistently so – an improvement on performance of the service before (Dawood (IDM Councillor) and Ratepayer interviews). The figure below, taken from SWC's internal reporting system, gives an indication of their effectiveness:

32% of households in Ilembe Municipality district have no access to clean drinkable water. It is a major challenge for Siza to eliminate this backlog, or is the backlog due to insufficient investment in infrastructure by Siza?



5. ADDITIONAL INFORMATION

Some additional takeaways from the open and frank meeting with the Siza Water Management.

1. Umgeni and Siza concluded a settlement agreement prior to the last ConCourt outcome, and the finding made no reference to this settlement agreement. Advocate Wim Trengrove believes that this settlement agreement therefore remains valid.
2. Umgeni got a cost order from the ConCourt but have not as yet had this cost order taxed.
3. Umgeni has been silent since the outcome of ConCourt and have not replied to any of the letters written to them by Siza. In other words, a bit of a stalemate at this stage, and the ball is in Umgeni's court.
4. The ConCourt ruling also does not recognise any arrear increases so at best increases can only be considered going forward
5. Siza management is fully aware that the community and the DOCRRA team are keen to assist them in either re-negotiating the Siza agreement, and/or extending it, and they will keep DOCRRA posted on further developments.
6. Siza agrees that any increase will have to be carefully considered and phased in over time.

6. DOCRA'S POSITION AND THE WAY FORWARD

The investigation into the Siza Water case was not only rewarding, but also gave us some insight into the dynamics of local authorities.

DOCRA needs to discuss the following issues when dealing with the Siza Water case:

- a) Higher cost for businesses if we had to go the Umgeni route.
- b) Service levels of Siza much better than Umgeni – nobody is perfect, but there is a difference between the service levels of the two companies.
- c) Siza is not perfect – The DA said the cost of water losses had more than doubled from R 83.6 to R 187.89m. Reservoirs overflows, timely reported leaks, and disconnecting illegal connections, is not happening. According to Siza this is not true, but they do have challenges with illegal connections and non-paying residents. This, however, is not a threat to their financial sustainability.
- d) Further investigation into the actual service levels of Siza Water needs to be done.
- e) Siza did not pass the 37.9% tariff increase from Umgeni onto their customers. What will happen next year? What percentage will they pass onto their customers? They themselves are unsure about this at this stage.
- f) Decide on the level of involvement from DOCRA's side – still early days before the contract ends, and there is still the possibility that Siza finds an amicable solution to the tariff increase with Umgeni Water. Maybe follow a “wait and see” strategy?
- g) How can DOCRA drive the success story of this Public/Private Partnership through their members and other local organizations e.g., Business Chamber



It is my final recommendation, based on this report, that DOCRA, together with other key role players, must set up a strategy on how to assist Siza Water in their efforts to renew their contract.

Stephan Marais

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DOCRA Siza Water Sub-Committee

REFERENCES

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2. North Coast Courier – November 2018
3. Siza Annual Water Report 2020-2021
4. Siza Approved Water Tariffs 2021 -2022
5. Umgeni Water Report 2021
6. Umgeni Water Tariffs for Ethekeweni Municipality 2021-2022