

The Honourable Minister Tina Joemat-Pettersson
Minister of Energy
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The Department of Energy
By email: IRP.Queries@energy.gov.za; IEP.Queries@energy.gov.za

URGENT

29 November 2016

Dear Minister

REQUEST FOR AN EXTENSION OF TIME TO COMMENT ON THE INTEGRATED ENERGY PLAN AND THE INTEGRATED RESOURCE PLAN UPDATE, AND COPIES OF DOCUMENTS REQUIRED IN ORDER TO MAKE MEANINGFUL COMMENT

1. The Integrated Energy Plan (IEP) and the Integrated Resource Plan (IRP) Update were published in the Government Gazette No 40445 on 25 November 2016. Comments on both documents are due by 15 February 2017. The organisations set out below submit that a reasonable and fair opportunity for comment has not been provided.
2. On 31 October 2016, the Life After Coal Campaign (made up of groundWork, the Centre for Environmental Rights and Earthlife Africa, Johannesburg) together with Greenpeace Africa, published a set of minimum requirements for the IRP, before it was made available for public participation. In this statement, it was indicated that there was “some doubt” as to whether the IRP publication would “be subject to a reasonable and fair opportunity for the public to make input. Since these energy decisions have significant impacts for all South Africans, and for constitutional environmental rights, there is no room for secrecy or box-ticking: there must be full and meaningful stakeholder engagement in all stages of the process towards finalising an updated IRP.”¹
3. We write to request an extension of time for public comment on the IEP and the IRP Update until **31 March 2017** in order to afford interested and affected parties a fair and reasonable opportunity to make submissions on the IEP and IRP Update. Thereafter, **at least a further 60 days** are required for comment on the scenarios; and once the policy-adjusted IRP has been determined, **at least a further 30 days** for comment on that.
4. Secondly, the organisations write to request copies of various documents that are required in order for them to make meaningful submissions on the IRP Update and the IEP. Should these documents not be provided by **1 December 2016**, the organisations will request that the deadline for comment be extended beyond 31 March 2017 by as many weeks as it takes to provide copies of all the outstanding documents.

¹ <http://cer.org.za/news/no-room-for-secrecy-environmental-organisations-publish-minimum-requirements-for-sas-overdue-integrated-resource-plan-for-electricity>

5. We address these issues below.

The planned public participation process and documents that have been made available

6. At a media briefing of 22 November 2016, the Minister advised that:
 - 6.1 the IEP and IRP Update would be published in the Government Gazette early on 25 November 2016;
 - 6.2 reports - including annexures - would be available on the Department of Energy website (www.energy.gov.za) from 22 November 2016;
 - 6.3 roadshows in Johannesburg, Cape Town, Durban and Port Elizabeth would take place between 7 and 15 December 2016;
 - 6.4 additional provincial consultation roadshows would take place during the month of January 2017, with “details to be communicated once logistics are in place”;
 - 6.5 consultation would take place “with as many stakeholder bodies as possible, including NEDLAC”;
 - 6.6 exact dates and venues would be available on the Department website; and
 - 6.7 consultations will be opened until February 2017.
7. In relation to the IRP development, the Minister indicated that: the basis for the planned public consultation process was settling the key assumptions and developing a base-case; “modelling and analysing the scenarios and sensitivities” was underway; and that the policy adjustment (developing the final plan taking into account the various scenarios and policy positions) would follow after public consultation and scenario analysis.
8. In the IRP presentation made available on 22 November 2017, it is indicated that the confirmed consultation schedule for Gauteng, Western Cape, Eastern Cape and KwaZulu Natal would be available on the Department’s website from 22 November 2016; and the schedule for the other provinces would be on the website by 15 December 2016. This presentation indicates that NEDLAC and provincial consultations (on assumptions, demand, and scenarios) would be done in February 2017, with the collation and consolidation of public inputs also in February 2017, and the policy adjustment in March 2017. In other words, there is no further opportunity envisaged for public participation in the policy adjustment before the IRP is promulgated. It is submitted that this is not lawful, reasonable or procedurally fair, nor does it accord with the constitutional requirements for public administration to respond to people’s needs, to encourage the public to participate in policy-making, and to foster transparency by providing the public with timely, accessible and accurate information.
9. Contrary to the presentation, the IRP Update indicates that public consultation – including at NEDLAC - will be concluded in January 2017.
10. The IRP Update also indicates² that the following IRP annexures will be available on the Department’s website:
 - 10.1 Electronic Power Research Institute Report (EPRI) (Technology Costs)
 - 10.2 Demand Forecast
 - 10.3 Technology Learning Rates
 - 10.4 Discount Rate Presentation
 - 10.5 Additional Assumptions Report
11. It also indicates that: “the complete schedule of decommissioning dates for all other Eskom plants as well as non-Eskom plants is included in the document titled ‘Additional Assumptions’

² P.18.

which can be found on the DoE website (IRP Annexure C)³; detailed presentation on the Department's website is available on the National Treasury's revision of the social discount rate of 8.4% to 8.2%,⁴ and that "details on other additional assumptions used in the modelling and analysis of the base such as the exchange rate, primary fuel costs etc." are available on the website.⁵

12. The IEP and IRP update were published in the Gazette on 25 November 2016. However, as at 29 November 2016, not all of the promised annexures have been made available. For instance, in relation to the IRP, only the following annexures are on the Department's website: the EPRI Report on Technology Costs and the CSIR Demand Forecast Report. The decommissioning dates, the technology learning rates, the discount rates, and the additional assumptions have not been made available. We also record that the documents made available to date are not an adequate basis for meaningful consultation, nor sound democratic process.

13. The Department website indicates the following consultation schedule:

- Gauteng: Johannesburg – 7 December 2016
- Kwa-Zulu Natal: Durban – 9 December 2016
- Western Cape: Cape Town – 13 December 2016
- Eastern Cape: Port Elizabeth – 14 December 2016
- Northern Cape – January 2017 (Exact date to be confirmed)
- North West - January 2017 (Exact date to be confirmed)
- Limpopo - January 2017 (Exact date to be confirmed)
- Mpumalanga - January 2017 (Exact date to be confirmed)
- NEDLAC - February 2017.

14. In other words, it appears that only 8 workshops in only 8 cities (in 8 of the 9 provinces) are planned before the NEDLAC consultation, with the first being on little more than a week's notice. This, we submit is hopelessly inadequate for the reasons set out below. In addition, the workshops should be much more widespread, with many more of these planned; particularly in the areas that will be most impacted by the energy decisions made in terms of the IRP Update and IEP – such as coal-impacted communities in the Mpumalanga Highveld.

The documents that are required in order to make meaningful submissions

15. In addition to the documents set out above – that are indicated will be made available on the Department's website, the organisations request access to the following documents that are required in order for them to make meaningful submissions on the IRP Update and the IEP:

- 15.1 the recommendations on the IRP by the Ministerial Advisory Council on Energy (MACE) IRP Working Group to the Minister;⁶
- 15.2 the study commissioned by the Department's Nuclear branch;⁷
- 15.3 Eskom's and Kelvin coal-fired power station's detailed decommissioning plans and timelines, as well as cost estimates;
- 15.4 a list of coal mines that would be closed as a result of Eskom decommissioning, including details regarding the costs to rehabilitate the coal mines and who would bear this cost;

³ p.9.

⁴ p.11.

⁵ p.11.

⁶ <https://www.businesslive.co.za/bd/national/2016-11-03-minister-advised-against-nuclear/>

⁷ Referred to on p.6 of the IRP Update.

- 15.5 the terms of reference for the pre-feasibility study to extend the lives of Eskom's stations and all other records relating to Eskom's Fleet Renewal Strategy;⁸ and
- 15.6 correspondence from the Department of Environmental Affairs to the Department of Energy "indicating that carbon budget methodology must be used instead of emissions decline constraints".⁹
16. Without access to these crucial documents, we are unable to evaluate the draft IRP Update and IEP adequately. We have a constitutional right to access this information, which is also required to enable us to exercise our rights to just administrative action and to an environment not harmful to health or wellbeing and to have the environment protected. In this regard, we refer also to the judgement of the Supreme Court of Appeal in *ArcelorMittal South Africa v Vaal Environmental Justice Alliance*.¹⁰

Requirements for lawful, reasonable, procedurally fair, transparent public participation

17. In terms of section 6 of the National Energy Act, the Minister must develop and, on an annual basis, review and publish the IEP in the Gazette. Before finalising the plan, she must invite and duly consider public input. The IEP must deal with issues relating to the supply, transformation, transport, storage of and demand for energy. Among other things, it must: serve as a guide for energy infrastructure investments; take into account all viable energy supply options; and guide the selection of the appropriate technology to meet energy demand. A draft IEP (IEP 2012) was circulated for public comment a few years ago, but was never finalised.
18. In terms of regulation 4 of the Electricity Regulations on New Generation Capacity, 2001, the IRP must be developed by the Minister, after consultation with the National Energy Regulator of South Africa and be published in the Gazette. It aims to give effect to national policy. The current official IRP (the IRP 2010) was promulgated in May 2011 and itself states that it is a living plan that should be continuously revised and updated as necessitated by changing circumstances. That IRP states that it should "at the very least" be revised by the Department of Energy every two years. So it should have been revised in 2012. Although there was an update process underway a few years ago, that process was abandoned.
19. The IRP Update and IEP are vital documents setting out government's plans for South Africa's future energy mix. Both have been substantially delayed and are long overdue. These energy decisions have significant impacts for all South Africans, and for constitutional environmental rights. They have enormous financial implications for our country, with massive long-term ramifications not only for the economy and our international competitiveness, but also for our vulnerability to climate change. As a result, a full, fair and meaningful opportunity for comment on the IRP Update and IEP must be provided. A failure to provide such opportunity would violate the requirements of lawfulness, reasonableness and procedural fairness required by the Promotion of Administrative Justice Act, 2000 (PAJA) and/or the constitutional requirements (in section 195 of the Constitution of the Republic of South Africa, 1996) to encourage the public to participate in policy-making and to foster transparency.

⁸ <http://www.eskom.co.za/news/Pages/Apr24.aspx>

⁹ Referred to on p.10 of the IRP Update.

¹⁰ *Company Secretary of Arcelormittal South Africa and Another v Vaal Environmental Justice Alliance* (69/2014) [2014] ZASCA 184; 2015 (1) SA 515 (SCA); [2015] 1 All SA 261 (SCA) (26 November 2014).

20. The current public participation procedure envisaged by the Department does not comply with PAJA and/or other constitutional requirements for reasons that include the following:
- 20.1 the public is expected to make submissions on the documents in workshops that start as early as 7 December 2016, in circumstances where:
 - 20.1.1 important documents have not been made available;
 - 20.1.2 the documents provided are not only voluminous (many hundreds of pages), but highly technical and complex;
 - 20.1.3 there has not been nearly enough time to consider and analyse those documents that have been made available, let alone to take advice from experts or to prepare presentations;
 - 20.2 several of the organisations represent or are comprised of communities that do not have easy access to internet and email facilities and whose home language is not English;
 - 20.3 as non-profit organisations, the organisations have limited access to technical expertise; and
 - 20.4 many organisations are closed at the end of the year, and experts are unavailable.
21. In the circumstances, and in order to afford the organisations a fair, lawful, reasonable and meaningful opportunity to: study not only the IRP Update and IEP, but all of the annexures and additional requested documents; obtain expert assistance in analysing the documents; consult with communities and other groups who are impacted by energy decisions made in terms of the IRP Update and IEP; and make input into the policy-adjusted IRP, we make the following proposal:
- 21.1 all annexures and additional requested documents to be made available by **1 December 2016**;
 - 21.2 consultations with the public to commence **from 9 January 2017 (or such later date as is requested, depending on when the requested documents are made available)** and to be held all across the country, rather than only in 8 cities, with a particular focus (and more than one workshop) in areas most impacted by the energy decisions to be made in terms of the IRP Update and IEP;
 - 21.3 there must be consultations on the outputs of the scenarios modelling work currently underway and the potential basis and parameters for 'policy adjustment' to produce an actual plan;
 - 21.4 the public comment period should be extended until at least **31 March 2017 (or such later date as is requested, depending on when the requested documents are made available and when the hearings are held)**; and
 - 21.5 the public must be afforded **at least another 60 days** for input on the scenarios; and
 - 21.6 once the draft policy-adjusted IRP is available, the public must have an opportunity of **at least 30 days** to comment on it.
22. Kindly respond to this correspondence by **tomorrow, 30 November 2016**.

Yours sincerely

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