



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

The Honourable Minister Gwede Mantashe
Minister of Mineral Resources and Energy
By email: Mandisi.Mavata@dmr.gov.za
info@energy.gov.za

Copied to:

Mr Thabane Zulu
Director General
Department of Mineral Resources and Energy
By email: Thembeke.zuma@energy.gov.za

Tshepo Madingoane
Energy Planning
Department of Mineral Resources and Energy
By email: Tshepo.Madingoane@energy.gov.za
IRP.queries@energy.gov.za

Mr Jacob Mbele
Deputy Director General
Department of Mineral Resources and Energy
By email: jacob.mbele@energy.gov.za

Chris Forlee
Chief Executive Officer
National Energy Regulator SA
By email: Christopher.Forlee@nersa.org.za

Our ref: CER34.25/RH/NL
5 November 2019
URGENT

Dear Minister

REQUEST FOR WRITTEN REASONS: INTEGRATED RESOURCE PLAN FOR ELECTRICITY, 2019

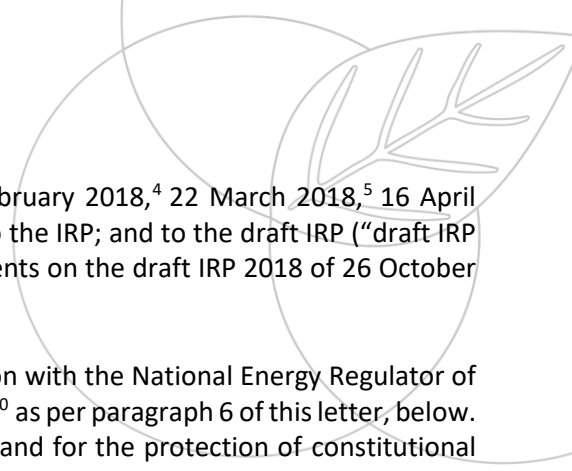
1. We address you on behalf of our clients, groundWork¹ and Earthlife Africa NPC.² We refer to the updated Integrated Resource Plan for Electricity (IRP) published on 18 October 2019.³

¹ groundWork is a non-profit environmental justice campaigning organisation working primarily in South Africa, in the areas of Climate & Energy Justice, Coal, Environmental Health, Global Green and Healthy Hospitals, and Waste. See more information at: www.groundwork.org.za.

² Earthlife Africa is a non-profit organisation, founded in Johannesburg, South Africa, in 1988, that seeks a better life for all people without exploiting other people or degrading their environment. See more information at: <http://earthlife.org.za/>.

³ Available at <https://cer.org.za/wp-content/uploads/2019/10/Integrated-Resource-Plan-18-October-2019.pdf>.

Cape Town: 2nd Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa
Johannesburg: First Floor, DJ du Plessis Building, West Campus, University of the Witwatersrand, Braamfontein, 2001, South Africa
Tel 021 447 1647 (Cape Town) | Tel 010 442 6830 (Johannesburg)
Fax 086 730 9098
www.cer.org.za

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2. We refer further to: our correspondence of the following dates: 28 February 2018,⁴ 22 March 2018,⁵ 16 April 2018,⁶ 4 June 2018,⁷ 19 November 2018 and 12 June 2019,⁸ in relation to the IRP; and to the draft IRP (“draft IRP 2018”) published for comment on 27 August 2018, as well as our comments on the draft IRP 2018 of 26 October 2018 (“IRP comments”).⁹
 3. We write to request reasons for the Minister’s decision, after consultation with the National Energy Regulator of South Africa (NERSA), to promulgate the updated IRP of 18 October 2019,¹⁰ as per paragraph 6 of this letter, below. Given the public importance of the IRP for South Africa’s energy future and for the protection of constitutional rights, we request that such reasons be provided as soon as possible, and by no later than **5 December 2019**.
 4. To the extent that the promulgation of the IRP constitutes administrative action by the Minister and NERSA in terms of the Promotion of Administrative Justice Act, 2000 (PAJA), we hereby request written reasons under section 5(1) of PAJA. We request that the reasons be provided within 30 days, given the urgency and public importance of this matter. Alternatively, to the extent that the IRP does not constitute administrative action under PAJA for any reason, we request written reasons for the decision under the principle of legality, see for example: *Judicial Service Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA) at paras 43-45.
 5. We hereby request that the Minister provide written **reasons for the decision in its totality**.
 6. Nevertheless, in an effort to ensure that the Department and Minister are alive to some of our clients’ concerns, and to ensure that the reasons address these concerns, we specifically request that the reasons deal with, but are not limited to, the following issues:
 - 6.1. What are the reasons for deciding that the IRP should provide for 1 500 MW new coal capacity, despite the IRP’s confirmation that it is intended to be a least-cost plan and that *“the system only builds renewables (wind and PV) and gas if unlimited renewable and gas resources are assumed”*?
 - 6.2. What are the reasons for increasing the coal allocation from 1 000 MW – in the draft 2018 IRP, on which public participation was conducted – to 1 500 MW?
 - 6.3. What are the reasons for “Decision 6” of the IRP, namely that *“South Africa should not sterilise the development of its coal resources for purposes of power generation, instead all new coal power projects must be based on high efficiency, low emission technologies and other cleaner coal technologies”*? In particular what are the criteria and benchmarks for determining what technologies are “clean coal” technologies?
 - 6.4. Why does the IRP refer to 900 MW of new coal capacity as *“already procured”*?¹¹ Can the Department confirm that this 900 MW pertains to the two preferred bidder coal independent power producers (IPP) – Thabametsi and Khanyisa?

⁴ Available at: https://cer.org.za/wp-content/uploads/2018/04/LAC-Letter-to-Minister-Radebe_28-Feb-2018_final.pdf

⁵ Available at: https://cer.org.za/wp-content/uploads/2018/03/LAC-and-GP-letter-to-Minister-Radebe-on-IPPs-22-3-18_signed.docx.pdf.

⁶ Available at: https://cer.org.za/wp-content/uploads/2018/04/LAC-and-GP-letter-to-Minister-Radebe-on-IRP_16-April-2018.DOCX.pdf.

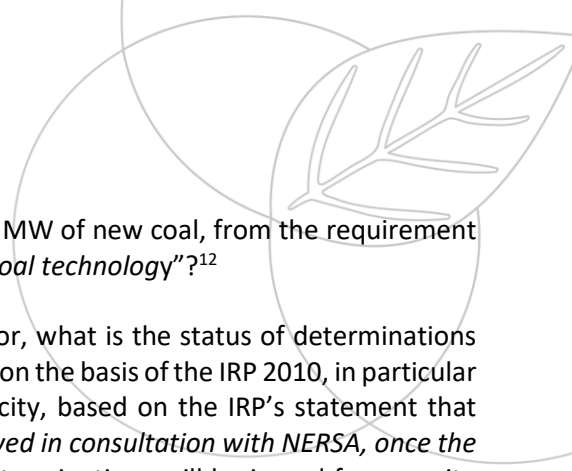
⁷ Available at: https://cer.org.za/wp-content/uploads/2018/06/LAC-letter-to-Min-Radebe-re-ERC-report_4-June-2018.docx.pdf.

⁸ Available at: https://cer.org.za/wp-content/uploads/2019/11/Life-After-Coal-letter-to-Minister-Energy-and-MR_12-June-2019.pdf.

⁹ CER comments on the Draft Integrated Resource Plan, 2018 as submitted to the Department of Energy on 26 October 2018. Available at: https://cer.org.za/wp-content/uploads/2018/10/CER-IRP-2018-Comment-DoE_26-10-18.pdf – see generally paragraphs 179 to 183. Also see CER comments on the Draft Integrated Resource Plan, 2018 as submitted to the Portfolio Committee on Energy on 5 October 2018. Available at: <https://cer.org.za/wp-content/uploads/2018/11/CER-IRP-Comments-PCE-5-10-18.pdf> – see generally paragraphs 180 to 183.

¹⁰ Available at <https://cer.org.za/wp-content/uploads/2019/10/Integrated-Resource-Plan-18-October-2019.pdf>.

¹¹ Ibid.

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- 6.5. For what reasons does the IRP exempt the “already procured” 900 MW of new coal, from the requirement “that all new coal to power capacity ... will be in the form of clean coal technology”?¹²
- 6.6. In order for us to understand the decision and the reasons therefor, what is the status of determinations under section 34 of the Electricity Regulation Act, 2006 (ERA) issued on the basis of the IRP 2010, in particular the 2012 Determination (GN 1075) for 2 500 MW new coal capacity, based on the IRP’s statement that “Ministerial Determinations issued under the IRP2010 will be reviewed in consultation with NERSA, once the updated IRP is approved”.¹³ Can the Minister confirm that new determinations will be issued for capacity allocations under this IRP? In other words, please confirm whether there will be any reliance on existing determinations for future procurement.
- 6.7. For what reasons was it decided (in reference to Decision 5 of the IRP) that the IRP should impose annual build limits on renewables (wind and PV) and how was the provided justification for these limits – i.e. to address “large erratic annual capacity allocations in the plan” – arrived at?
- 6.8. What are the reasons for concluding that new coal capacity, specifically, should be built into the system to “close the gap” when “annual build limits on renewables are imposed” and “realistic gas availability assumptions are applied”?
- 6.9. For what reasons does the Department consider the provision for new fossil fuel-based electricity sources (coal and gas) - which will lock South Africa into high greenhouse gas (GHG) emissions for at least the next 30 years - acceptable and permissible in terms of government’s international and Constitutional obligations to reduce GHG emissions?
- 6.10. For what reasons does the IRP provide for a 50 (fifty) year lifespan for existing Eskom coal-fired power stations, instead of providing for accelerated retirement and/or for the outcomes of Eskom’s MES suspension applications?
- 6.11. We note the acknowledgement that the National Environmental Management: Air Quality Act, 2004 requires polluting facilities such as Eskom’s plants to meet minimum emission standards (MES) by a certain time, “or they would be non-compliant and cannot be legally operated”. What are the reasons for the following recommendations and decisions in the IRP relating to Eskom’s MES compliance:
- 6.11.1. “In addressing the potential non-compliance with the law, a balance will have to be found between energy security, the adverse health impacts of poor air quality and the economic cost associated with these plants shutting down”;
- 6.11.2. “A number of Eskom power plants (Majuba, Tutuka, Duvha, Matla, Kriel and Grootvlei) have been retrofitted with emission abatement technology to ensure compliance with the law”, and “Grootvlei is the only station that has been brought to compliance”, bearing in mind that none of those stations has any plans to comply with sulphur dioxide MES at all;
- 6.11.3. the omission of any planned retrofits to comply with standards for, and abate emissions of, sulphur dioxide emissions by Eskom facilities, in 6.1.3 of Appendix A;
- 6.11.4. “In light of projected lower [Energy Availability Factor], the assumption adopted in the IRP is that NEMA-affected Eskom coal plant will remain available for production”;

¹² P52.

¹³ P62, IRP.

6.11.5. *“Taking into account supply and demand balance and the impact of load shedding on the economy, shutting down of MES non-compliant power plants and Koeberg power station in 2024 (at the end of its design life) are not recommended”; and*

6.11.6. *“Decision 3: Support Eskom to comply with MES over time, taking into account the energy security imperative and the risk of adverse economic impact”?*

6.12. We note that the 3 300MW coal-fired power station – which would form part of the Musina-Makhado Special Economic Zone (SEZ) designated by the Minister of Trade and Industry in 2016 – appears not to have been fully allocated or reflected in the IRP. For what reason is it **not** reflected in the IRP?

7. We await your response by **5 December 2019**.

8. Our clients’ rights are fully reserved.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

Nicole Loser

Attorney

Direct email: nloser@cer.org.za