

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 51765/2017

In the matter between:

THE CITY OF CAPE TOWN

Applicant

And

THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

First Respondent

THE MINISTER OF ENERGY

Second Respondent

And

CENTRE FOR ENVIRONMENTAL RIGHTS

Amicus Curiae

FIRST RESPONDENT'S SUPPLEMENTARY AFFIDAVIT

I, the undersigned

NHLANHLA GUMEDE

do hereby make oath and state that:

1. I am an adult male employed by the First Respondent (“**NERSA**”) as its Full Time Regulator Member primarily responsible for Electricity Industry.
2. The facts contained herein are within my personal knowledge and belief, save where the contrary is stated or the context otherwise indicates, and are true and correct.
3. This affidavit is filed pursuant to a pre-hearing conference held between the parties and the Honourable Judge Windell on 8 May 2020, during which counsel for the Second Respondent (“the Minister”) alluded to certain factual developments which, according to counsel for the Minister, may have a bearing on the application.
4. In that context, it was agreed between the parties (with Judge Windell’s concurrence) that:
 - 4.1. the Minister would deliver a supplementary affidavit detailing those developments by 16h00 on 8 May 2020; and
 - 4.2. NERSA would consider the necessity to deliver a supplementary affidavit in light of the contents of the Minister’s supplementary affidavit, and may deliver a supplementary affidavit by 09h00 on Monday, 11 May 2020.
5. The Minister delivered a supplementary affidavit on 8 May 2020. Amongst other things, that supplementary affidavit:

- 5.1. refers to the new Integrated Resource Plan (“**IRP**”) which was published on 18 October 2019 in Government Gazette 42784 in Government Notice 1360 (“**the IRP 2019**”);
 - 5.2. refers to draft regulations on new generation capacity issued by the Minister of Mineral Resources and Energy, which have been published for public comment; and
 - 5.3. refers to two draft section 34 determinations issued on 18 February 2020 which, according to the Minister’s affidavit, “*are awaiting NERSA’s concurrence*”.
6. In what follows, I address the first and third items.

THE IRP 2019

7. The Minister’s affidavit contains the website address at which the IRP 2019 may be located.
8. For convenience, a copy of the IRP 2019 is annexed hereto and marked “**SA1**”.
9. The IRP 2019 demonstrates, once again, the need for electricity planning to be undertaken and co-ordinated at a national level, as well as the risks associated with permitting the ad hoc development of renewable energy. I wish to draw the Court’s attention, in particular, to the following relevant passages:
 - 9.1. Paragraph 2.1 (p 11) and paragraph 5.3.2 (p 45), which note that existing power stations are due to be decommissioned, thereby opening up the

space for a new energy mix. They note that a just transition plan must be adopted to handle the decommissioning of those plants, to manage the human and economic costs that may arise.

- 9.2. Paragraphs 2.1 (pp 14-15), 4.5 (p 37) and 5.1 (p 41) identify some of the factors that need to be taken into account in planning for and rolling out renewable energy – namely the current lack of requisite storage capacity, the intermittent supply produced by renewable energy, and the transmission costs that renewable energy entails. All these factors speak to the need for careful and co-ordinated planning when RE is rolled out.
- 9.3. Paragraph 2.4 (p 16) describes the potential implications on energy tariffs and costs of increased renewable energy and self-supply arrangements.
- 9.4. Paragraphs 5.1 (p 41) and 5.3 (pp 43 to 49) describe the various factors that must be taken into account, and the balance that must be struck, in determining the energy source mix. They also emphasise the importance of maintaining annual limits on new renewable energy build , to avoid erratic annual capacity allocation.

THE TWO DRAFT SECTION 34 DETERMINATIONS

10. On 21 February 2020, NERSA received two draft determinations from the Minister, for its consideration and possible concurrence. The first provides for the procurement of 2000 MW of gap capacity. The second relates to 11 813 MW new generation capacity to be developed between 2022 and 2027.

11. Subsequent to the Minister providing NERSA with the two section 34 determinations, the following has transpired:
 - 11.1. On 18 March 2020, NERSA published the determinations for stakeholder comments;
 - 11.2. The closing date for the submission of comments in respect of the first determination (relating to gap capacity) was 14 April 2020. A number of comments were received in relation to a variety of aspects of the draft determination, including whether or not the electricity produced pursuant thereto, ought to be sold exclusively to Eskom or may be sold more broadly. The City did not submit comments in respect of that draft determination;
 - 11.3. NERSA is in the process of finalising its consideration of that draft determination in light of the comments received, and anticipates making a decision regarding concurrence on Thursday, 14 May 2020 in respect of the gap capacity determination (2000MW);
 - 11.4. In respect of the second determination, the closing date for stakeholder comments was 7 May 2020, and the comments received will now be considered. The City made submissions in respect of this determination, but NERSA has not yet considered them (or, indeed, any of the other comments received).

12. Under the current regime, the City can only run the new generation capacity process after the finalization of the draft regulations on new generation capacity which is under public consultation by the Department.

DEPONENT

I CERTIFY that this Affidavit was SIGNED and SWORN TO before me at _____ on this the _____ day of **MAY 2020**; the Deponent having acknowledged that she / he knows and understands the content of this Affidavit; and, the Regulations contained in Government Notice No 1258 of 21 July 1972 and R1648 of 19 August 1977, having been complied with.

COMMISSIONER OF OATHS

NAME & SURNAME:
DESIGNATION:
ADDRESS:
CONTACT NO: