



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

The Honourable Minister Gwede Mantashe

Minister of Mineral Resources and Energy

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Our ref: CER34.25/NL
13 October 2020
URGENT

Dear Minister

REQUEST FOR WRITTEN REASONS: MINISTERIAL DETERMINATION ON THE PROCUREMENT OF NEW GENERATION CAPACITY FROM RENEWABLES, STORAGE, GAS AND COAL

1. We address you on behalf of our client, groundWork.¹
2. We refer to the determination under section 34 of the Electricity Regulation Act, 2006 (ERA) and the Electricity Regulations on New Generation Capacity,² published by the Department of Mineral Resources and Energy on 25 September 2020,³ with the concurrence of the National Energy Regulator of South Africa (NERSA).⁴ This determination provides for new generation capacity to be procured from renewable energy sources (PV

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 Published in Government Notice 399, GG No. 34262, dated 4 May 2011.

³ Published in Government Notice 1015, GG No. 43734.

⁴ NERSA concurrence of July 2020 published at <http://nersa.org.za/wp-content/uploads/2020/09/Decision-and-Reasons-for-Decision-for-the-Concurrence-new-generation-capacity-from-Renewables.pdf>.

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(photovoltaic) and Wind), storage, gas and coal, in accordance with Table 5 of the Integrated Resource Plan for Electricity 2019 – 2030 (“**IRP 2019**”).⁵

3. We also refer the Life After Coal Campaign⁶ (**LAC**) comments of 7 May 2020 in response to NERSA’s consultation paper in respect of the draft version of this determination (“**LAC comments**”). We note that no changes were made to the draft determination in the promulgated determination, to which this letter refers. Based on the cogent and compelling reasons set out in the LAC comments:
 - 3.1 we, on behalf of our client, objected to the inclusion of any new fossil fuel generation capacity in the draft Ministerial determination (namely gas and coal) and requested that these allocations be removed entirely;
 - 3.2 we requested that the different generation capacities, with varying timeframes, should not all be included in the same determination, and the allocations for shorter-term renewables and storage should be prioritised, reserving allocations beyond 2024 for later determinations; and
 - 3.3 it was recorded that our clients do not accept that the decisions and allocations in the IRP 2019 are lawful, nor that they constitute a valid basis for a Ministerial determination for new fossil fuel (1 500 megawatts (MW) of new coal, and 3 000 MW of new gas) capacity in terms of section 34 of the ERA. We reserved the right to take any further legal steps, including bringing a court application in relation to the objectionable portions of the IRP 2019 and any decisions flowing therefrom.
4. Despite these objections demonstrating that the inclusion of harmful new fossil fuel generation cannot be legally justified, the following allocations are confirmed in the same determination, as published:
 - 4.1 6 800 MW to be procured to be generated from **renewable energy sources** (PV and Wind), which represents the capacity allocated under the headings “PV” and “Wind”, for the years 2022 to 2024, in Table 5 of the IRP 2019 – this is only part of the IRP 2019 allocation for renewable solar PV and wind;
 - 4.2 513 MW to be procured to be generated from **storage**, which represents the capacity allocated under the heading “Storage”, for the year 2022, in Table 5 of the IRP 2019 – this is only part of the IRP 2019 allocation for storage;
 - 4.3 3 000 MW to be procured to be generated from **gas**, which represents the capacity allocated under the heading “Gas and Diesel”, for the years 2024 to 2027, in Table 5 of the IRP 2019 – this is the entire allocation for gas in the IRP 2019; and
 - 4.4 1 500 MW should be generated from **coal**, which represents the capacity allocated under the heading “Coal”, for the years 2023 to 2027, in Table 5 of the IRP 2019 – this is the entire allocation for coal in the IRP 2019.
5. In response to the publication of this determination, **we write to you to record that our client reiterates and stands by the objections and concerns detailed in the LAC comments.**
6. In addition, we hereby **request written reasons for the decision to promulgate the determination,** in terms section 5 of Promotion of Administrative Justice Act, 2000 (PAJA).
7. As highlighted in the LAC comments, the issuing of a Ministerial determination constitutes administrative action affecting the public. This was confirmed in the judgment by the Western Cape High Court in the case of *Earthlife*

⁵ Published in Government Notice 1360 in GG No. 42784, dated 18 October 2019.

⁶ Life After Coal is a joint campaign by organisations Earthlife Africa, groundWork, and the Centre for Environmental Rights, which aims to: discourage the development of new coal-fired power stations and mines; reduce emissions from existing coal infrastructure and encourage a coal phase-out; and enable a just transition to sustainable energy systems for the people. See <https://lifeaftercoal.org.za/>.

*Africa Johannesburg and Southern African Faith Communities Environment Institute v the Minister of Energy & Others.*⁷ Accordingly, the decision to issue this Ministerial determination must satisfy the requirements set out in PAJA, and our client, along with the public, is entitled to the reasons for the Minister's decision.

8. We note that our client has already launched an application to compel reasons for your decision to promulgate the IRP 2019 in the High Court, which application against the Minister and NERSA (under case number 32200/20) is presently pending as the reasons for that decision have yet to be provided by the Minister.
9. We request that the Minister provide written **reasons for his decision to promulgate the determination in its totality**, and specifically request that the reasons deal with, but are not limited to, the following issues:
 - 9.1. What are the reasons for the allocation of 1 500 MW of new coal capacity in the determination, despite the harms of such an allocation as set out in the LAC comments?
 - 9.2. For what reasons did the Minister decide to allocate the entire IRP 2019 coal allocation from 2023 to 2027 in this determination?
 - 9.3. What are the reasons for the allocation of 3 000 MW of new gas capacity in the determination, despite the harms of such an allocation as set out in the LAC comments?
 - 9.4. For what reasons did the Minister decide to allocate the entire IRP 2019 gas allocation from 2024 to 2027 in this determination?
 - 9.5. Do the "*independent power producers*" referred to in paragraph 8 of the Ministerial determination include the two preferred bidder coal independent power producers (IPP) – Thabametsi and Khanyisa? In other words, does the 1500 MW of capacity to be generated from coal, as provided for in this determination, include the capacity to be generated from Thabametsi and Khanyisa?
 - 9.6. What are the reasons for including different generation capacities, with varying timeframes, in the same determination, particularly given the short timeframes envisaged for the renewable and storage allocations – allocated for before 2024?
10. We request your urgent response within 30 days, by **12 November 2020**.
11. Our client's rights are fully reserved.
12. We await to hear from you.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

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⁷ 19529/2015 [2017] 3 All SA 187 (WCC); 2017 (5) SA 227 (WCC) (26 April 2017).