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Our ref: CER59.1-3/NL/MMK  
Date: 6 July 2021

Dear Sirs

**NERSA ELECTRICITY GENERATION LICENCE APPLICATIONS FOR KARPOWERSHIP RICHARD'S BAY, NGQURA AND SALDHANHA**

- 1 We address you on behalf of our client, groundWork,<sup>1</sup> and refer to our email correspondence dated 17 June 2021, as well as your response thereto on 24 and 30 June 2021 regarding the generation licence applications by Karpowership SA Coega (RF) Pty Ltd, Karpowership SA Saldhana Bay (RF) Pty Ltd, and Karpowership Richards Bay (RF) Pty Ltd in respect of three proposed gas power generation projects.
- 2 We write to request an extension for the time period within which to comment on the licence applications for these three projects, and to highlight flaws in the public participation process, which ought to be remedied.
- 3 We recorded in our 17 June 2021 correspondence that this matter should be advertised in the national newspaper, as it is of national interest and importance. You advised that this is not necessary, since the Electricity Regulation Act, section 11(1) only requires a notice in local newspapers.
- 4 With regards to the public participation process, when it concerns administrative action (which the NERSA licensing decisions would be), the courts are clear that it is not only the principle legislation that needs to be taken into account, but the precepts of lawful, reasonable and procedurally fair administrative action, in terms of section 33 of the Constitution, as well as the Promotion of Administrative Justice Act, 2000.<sup>2</sup>
- 5 As indicated in our previous correspondence, the issue of Karpowerships obtaining a generation licence is of national importance, and of public interest. The electricity generation from these Karpowership projects and specifics surrounding the licence applications including: where and how the electricity will be produced, whether this will impact on the electricity price, and whether this will have long term implications for the public (and knock-on effects on the economy), do not only impact people in Coega, Richards Bay, or Saldhana, but the

<sup>1</sup> 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: [www.groundwork.org.za](http://www.groundwork.org.za).  
<sup>2</sup> *Escarpment Environment Protection Group and Another v Department of Water Affairs and Others [2013] ZAGPPHC 505 (20 November 2013)* at para 23-4 concerning public participation under the National Water Act, states that "A considerable degree of flexibility is accorded to the responsible authority to achieve procedurally fair administrative action... Whether or not a responsible authority is required by law to take any such step depends on the facts of the case before it. And the steps individually described in s 41 are not the only steps which a responsible authority can, or should, take in a given instance. A responsible authority must take steps within its power to ensure compliance with s 33 of the Constitution and s 3 of PAJA. To that end, s 4(1)(e) of PAJA specifically empowers a responsible authority to follow a procedure other than those specifically mentioned in ss 4(1)(a) and (b) which is appropriate to give effect to s 3."

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people of South Africa as a whole. It is well known and publicized that these projects will come with substantial cost burdens for the people of South Africa and for electricity prices in South Africa. We therefore urge NERSA to publicise the applications much more widely, including in national newspapers, together with the exact weblink (as opposed to a generic site for NERSA and Karpowerships' websites) for the online application documents. Locations where the application documents can be found should also be published in national newspapers and media so that interested parties and communities who may not have technical expertise, or easy and frequent access to the internet may be able to access the documents. It should be borne in mind that there are communities who may not have access to computers and may only have access through their cell phones, with limited data – the access should therefore be as simple and direct as possible.

- 6 We also requested clarity on the deadline dates for the comment submissions – this has not been clarified anywhere, nor have our requests for deadline yielded any response from NERSA. The 6 local newspapers advertisements that you provided have different dates and therefore clarity as to the deadline is required. Kindly advise the deadline for all three applications, as well as the date for any planned public hearings on the licence applications.
- 7 In relation to the commenting period, you advised that a period of 90 days (i.e 30 days per application) for comment will not be necessary, since *"the three applications are all similar in nature and using the same technology at all three sites, requesting 90 day extension will be prejudicial to the applicants"*. Whilst it is true that same technology may apply for all three Karpowership applications, the legal considerations under the Electricity Regulation Act, 2006 also require consideration of among others, Karpowerships' ability to meet environmental and all other legislative obligations. In this regard, the three Karpowerships are located in three different locations, with separate and distinct environmental impacts, each with their own separate Environmental Impact Assessments. All three environmental authorisations were refused on 13 July, with separate reasoning for each. As indicated in our previous correspondence, the analysis of the highly technical documents take time and also may require input from experts, and consulting with client will require time. In short, the three projects cannot be treated as identical as their circumstances and locations are different. This will need to be considered as part of the NERSA licence application process, and we submit that at the very least a period of 60-90 days should be given for consideration and comment on the applications for all three projects. We therefore formally request such an extension for 90 days for the three applications.
- 8 We submit that there will be no prejudice to the Applicant as a result of such an extension, since, on the 13 June 2021, the Environmental Authorisations for all three projects were refused. As a result the projects in any event are faced with delays as they remedy their EIA processes, and in the absence of environmental authorisations which they would need to proceed. This in turn hampers their ability to reach commercial and financial close.
- 9 Kindly advise on the current deadline for submissions and confirm whether our client will be allowed the requested extension of 90 days within which to make submissions on the application. Given the urgency of the matter, we would appreciate your response on or before 9 July 2021.
- 10 Our client's rights are reserved.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

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