



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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Our ref: CER CER34.25/NL

19 November 2020

Dear Sirs

TRUSTEES FOR THE TIME BEING OF THE GROUNDWORK TRUST / THE MINISTER OF MINERAL RESOURCES & ENERGY AND NERSA (CASE NO 32200/20)

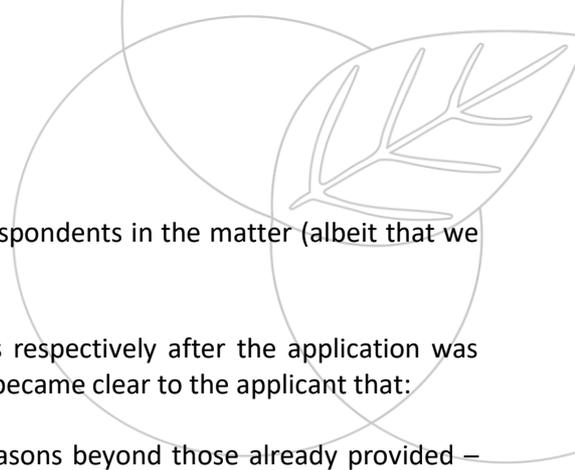
1. We refer to the above matter.
2. We record a relevant chronology of events in this matter:
 - 2.1. Since November 2019, our client has sought to obtain reasons for decisions in relation to the Integrated Resource Plan for Electricity, 2019 (IRP). Our client sought these reasons because the IRP has wide and far-reaching implications for the people of South Africa, including our client, and a number of decisions in the IRP had not been substantiated by reasons or technical evidence. Failing the provision of the requested reasons and following multiple follow-ups, our client launched this application in July 2020. This application was brought in the public interest in order to advance and protect Constitutional rights.
 - 2.2. It is hoped that, instead of there being protracted litigation, the respondents would adhere to their Constitutional and statutory duties to provide proper reasons.
 - 2.3. On 14 August 2020 the first respondent tendered – on a without prejudice basis – his reasons and responses to the questions set out in our client’s request for reasons of November 2019. This tender is referred to and attached to the first respondent’s answering affidavit of 21 October 2020 as annexures SGM6 (a) and (b);
 - 2.4. The first respondent filed a notice of opposition on 24 August 2020.
 - 2.5. Our client considered (and continues to consider) that the reasons provided were inadequate and in certain respects contradictory. Accordingly, on behalf of our client, we wrote to the first respondent on 3 September 2020 requesting clarification on a number of issues in the first respondent’s purported reasons of 14 August 2020. These have not been forthcoming.
 - 2.6. The second respondent filed its notice of opposition on 15 October 2020.

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- 2.7. We have now finally received the answering affidavits of both respondents in the matter (albeit that we still await NERSA's signed answering affidavit).
3. The answering affidavits were accordingly filed three and four months respectively after the application was instituted. It is only upon having sight of the answering affidavits that it became clear to the applicant that:
- 3.1. The first respondent is adamant in his refusal to provide any reasons beyond those already provided – despite the fact that those provided are patently inadequate; and
- 3.2. The second respondent is adamant in its refusal to provide any reasons at all.
4. We respectfully submit that the stances of both respondents are wrong as a matter of law and, if needs be, are willing to make such arguments to the court.
5. However, upon careful consideration, it appears that the limited time and resources of our clients and ourselves would be better spent on other matters. In light of the respondents' stance, it has become clear that our client, and we, would have to go through multiple rounds of litigation in multiple courts, **just to obtain adequate reasons** for decisions related to South Africa's electricity future – decisions with long-term and far reaching impacts for all, including our client. This is deeply regrettable, at odds with the Constitutional scheme and a distraction from the substantive issues that demand urgent attention.
6. Accordingly, in the interests of avoiding the expenditure of further time and costs on this matter, having received some reasons from the Minister (albeit inadequate reasons); **we propose a settlement of this matter on the basis that the applicant withdraws its application and each party pay its own costs.**
7. We note that this is consistent with the jurisprudence of the Constitutional Court concerning the costs implications of applications brought in the public interest to advance Constitutional rights.
8. Please confirm that you are in agreement with this proposal. If both respondents agree, we will file a notice to withdraw, on the abovementioned terms, within one week of both respondents agreeing.
9. This letter is written **with** prejudice and will be placed before the court should the need arise.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

Nicole Loser

Attorney and Programme Head: Pollution & Climate Change

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