

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 19529/15

In the matter between:

**EARTHLIFE AFRICA - JOHANNESBURG** First Applicant

**SOUTHERN AFRICAN FAITH COMMUNITIES'  
ENVIRONMENT INSTITUTE** Second Applicant

and

**THE MINISTER OF ENERGY** 1<sup>st</sup> Respondent

**THE PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA** 2<sup>nd</sup> Respondent

**THE NATIONAL ENERGY REGULATOR OF  
SOUTH AFRICA** 3<sup>rd</sup> Respondent

**SPEAKER OF THE NATIONAL ASSEMBLY** 4<sup>th</sup> Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL  
OF PROVINCES** 5<sup>th</sup> Respondent

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NUCLEAR PROGRAMME

DETERMINATION UNDER SECTION 34(1) OF THE ELECTRICITY REGULATION ACT 4 OF 2006

PART A

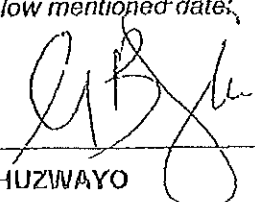
The Minister of Energy ("the Minister"), in consultation with the National Energy Regulator of South Africa ("NERSA"), acting under section 34(1) of the Electricity Regulation Act 4 of 2006 (as amended) (the "ERA") has determined as follows:

1. that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in *Government Gazette* No. 34263) ("IRP 2010-2030" or as updated) [our insertion];
2. electricity produced from the new generation capacity ("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective;
3. the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;
4. the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;
5. the procurement agency in respect of the nuclear programme will be the Department of Energy;
6. the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, requests for proposals and/or all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;
7. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and

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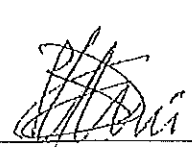
- 8. the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.

*Concurrence to this Determination given by the National Energy Regulator of South Africa on the below mentioned date;*

SIGNATURE: 

MS CECILIA KHUZWAYO  
CHAIRPERSON: NERSA  
DATE: 17/12/2013

*Determination made by the Minister of Energy on the below mentioned date:*

SIGNATURE: 

DIKOBE BEN MARTINS, MP  
MINISTER: ENERGY  
DATE: 11.11.2013



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PL42

## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

## DEPARTMENT OF ENERGY

NO. 1268

21 DECEMBER 2015

## NUCLEAR PROGRAMME

## DETERMINATION UNDER SECTION 34(1) OF THE ELECTRICITY REGULATION ACT 4 OF 2006

## PART A

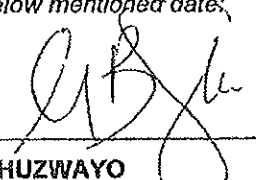
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1. that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in *Government Gazette* No. 34263) ("IRP 2010-2030" or as updated) [our insertion];
2. electricity produced from the new generation capacity ("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective;
3. the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;
4. the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;
5. the procurement agency in respect of the nuclear programme will be the Department of Energy;

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- 6. the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, requests for proposals and/or all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;
- 7. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and
- 8. the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.

*Concurrence to this Determination given by the National Energy Regulator of South Africa on the below mentioned date,*



**SIGNATURE:** \_\_\_\_\_  
**MS CECILIA KHUZWAYO**  
**CHAIRPERSON: NERSA**  
**DATE:** 17/12/2013

*Determination made by the Minister of Energy on the below mentioned date:*



**SIGNATURE:** \_\_\_\_\_  
**DIKOBEN BEN MARTINS, MP**  
**MINISTER: ENERGY**  
**DATE:** 11.11.2013



PL43

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STATE ATTORNEY  
DX 298 PRETORIAIN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWNCASE NO: 19529/15

In the matter between :-

EARTHLIFE AFRICA - JOHANNESBURG

First Applicant

SOUTHERN AFRICAN FAITH COMMUNITIES'  
ENVIRONMENTAL INSTITUTE

Second Applicant

and

THE MINISTER OF ENERGY

First Respondent

THE PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA

Second Respondent

THE NATIONAL ENERGY REGULATOR OF  
SOUTH AFRICA

Third Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fourth Respondent

CHAIRPERSON OF THE NATIONAL COUNCIL  
OF PROVINCES

Fifth Respondent

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**SUMMARY**

**SUBJECT: DETERMINATION IN RESPECT OF THE NUCLEAR PROGRAMME**

**BASIC ISSUES INVOLVED**

1. The Integrated Resource Plan contemplates the introduction of approximately 9600MW of nuclear energy by 2030. The process can only continue once the Minister of Energy has made a determination under section 34 of the Electricity Regulation Act, in consultation with Nersa.
2. This submission serves to request the approval of the Minister to consult with NERSA by signing the letter seeking their consideration and concurrence to the attached Determination.

**RECOMMENDATION**

It is recommended that the Minister:

- 1.1 approves the s34 determination in **Annexure A** for promulgation in the government gazette, so that the Nuclear Procurement process can be launched; and
- 1.2 signs the attached letter to Nersa seeking their concurrence.

*Boon* *m.f.*

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MINISTER

DEPUTY MINISTER

**SUBJECT: DETERMINATION IN RESPECT OF THE NUCLEAR PROGRAMME****2. PURPOSE**

To request the Minister to approve the attached determination regarding the Nuclear Programme in terms of s34 of the Electricity Regulation Act and to seek the concurrence of NERSA as required under the Electricity Regulation Act.

**3. BACKGROUND AND MOTIVATION**

- 3.1 The Department of Energy ("DoE") intends to prepare documentation for the procurement of approximately 9600MW of power from nuclear energy, which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in Government Gazette No. 34263) ("IRP 2010-2030").
- 3.2 Electricity produced from the new generation capacity ("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective, as prescribed under the Electricity Regulation Act.
- 3.3 The nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement.
- 3.4 The procurement process will be launched once the Minister has made a determination in terms of s34 of the Electricity Regulation Act. The proposed determination is included as **Annexure A**.

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4. **COMMUNICATION WITH OTHER DEPARTMENTS/ORGANISATIONS**

National Nuclear Energy Executive Coordination Committee including National Treasury,  
Department of Public Enterprises, and Nersa

5. **FINANCIAL IMPLICATIONS**

None

6. **STAFFING IMPLICATIONS**

None

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7. RECOMMENDATION

It is recommended that the Minister:

- 7.1 approves the s34 determination in Annexure A for promulgation in the government gazette, so that the Nuclear Procurement process can be launched; and
- 7.2 signs the attached letter to Nersa seeking their concurrence.


Recommendation Supported

Recommended Not Supported

MS B THOMPSON, MP  
 DEPUTY MINISTER: ENERGY  
 DATE:

MS B THOMPSON, MP  
 DEPUTY MINISTER: ENERGY  
 DATE:

*Recommendation 7....Approved*



DIKOBÉ BEN MARTINS, MP  
 MINISTER: ENERGY  
 DATE: 11.11.2013  
 Comments/amendments -----  
 -----  
 -----  
 -----

*Recommendation 7..... Not Approved*

DIKOBÉ BEN MARTINS, MP  
 MINISTER: ENERGY  
 DATE:  
 Comments/amendments-----  
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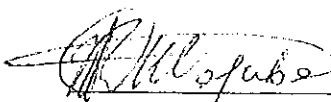
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7. RECOMMENDATION

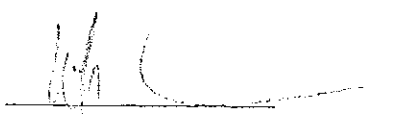
It is recommended that the Minister:

- 7.1 approves the s34 determination in Annexure A for promulgation in the government gazette, so that the Nuclear Procurement process can be launched; and
- 7.2 signs the attached letter to Nersa seeking their concurrence.

Recommended

  
 \_\_\_\_\_  
 MS. N. MAGUBANE  
 DIRECTOR-GENERAL: ENERGY  
 DATE: 8/11/2013

\_\_\_\_\_  
 ZIZAMELE MBAMBO  
 DDG: NUCLEAR ENERGY  
 DATE:

  
 \_\_\_\_\_  
 OMPI APHANE  
 DDG: POLICY AND PLANNING  
 DATE: 8/11/2013

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NUCLEAR PROGRAMME

DETERMINATION UNDER SECTION 34(1) OF THE ELECTRICITY REGULATION ACT 4 OF 2006

PART A

The Minister of Energy ("the Minister"), in consultation with the National Energy Regulator of South Africa ("NERSA"), acting under section 34(1) of the Electricity Regulation Act 4 of 2006 (as amended) (the "ERA") has determined as follows:

1. that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in *Government Gazette* No. 34263) ("IRP 2010-2030");
2. electricity produced from the new generation capacity("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective;
3. the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;
4. the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;
5. the procurement agency in respect of the nuclear programme will be the Department of Energy;
6. the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, requests for proposals and/or all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;
7. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and

*[Handwritten signatures]*

8.8

- 8. the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.

*Concurrence to this Determination given by the National Energy Regulator of South Africa on the below mentioned date:*

SIGNATURE: \_\_\_\_\_  
MS CECILIA KHUZWAYO  
CHAIRPERSON: NERSA  
DATE:

*Determination made by the Minister of Energy on the below mentioned date:*

SIGNATURE: \_\_\_\_\_  
DIKOBEN BEN MARTINS, MP  
MINISTER: ENERGY  
DATE:

RMJ  
m.j.



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**MINISTER  
ENERGY  
REPUBLIC OF SOUTH AFRICA**

Private Bag 298, Pretoria 0001, 7th Floor 182 Visagie Street, Old Visagie & Paul Kruger Street, Pretoria 0001. Tel: (+27 12) 406 7612, Fax: (+27 12) 323 5846  
Private Bag X9111, Cape Town, 8000, Parliamentary Building 7th Floor, 120 Pien Street, Cape Town. Tel: (+27 21) 469 6423, Fax: (+27 21) 466 5960

Ms Cecilia Khuzwayo  
Chairperson  
National Energy Regulator of South Africa  
Kulawula House  
526 Vermeulen Street  
Arcadia

**SECTION 34 DETERMINATION – NUCLEAR PROCUREMENT PROGRAMME**

Dear Ms Khuzwayo,

The purpose of this letter is to request confirmation of Nersa's concurrence in the proposed determination ("Determination") in terms of Section 34 of the Electricity Regulation Act 2006 ("ERA"). A copy of the determination is attached.

I hereby request that you confirm NERSA's concurrence with the terms of the Determination by responding to this letter and attaching a certified copy of the applicable NERSA decision.

If you have any queries or concerns regarding the contents of the Determination or the process of finalisation thereof, please do not hesitate to contact Ompi Aphane on 012 406 7680 or Email: [ompi.aphane@energy.gov.za](mailto:ompi.aphane@energy.gov.za), to discuss same.

Sincerely

**DIKOBÉ BEN MARTINS, MP**

**MINISTER: ENERGY**

**DATE: 11.11.2013**

*Handwritten initials and signature*

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Kulawula House  
526 Madiba Street  
Arcadia 0083  
Pretoria, SOUTH AFRICA

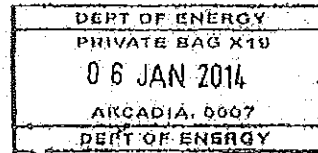
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SOUTH AFRICA

Tel. +27(0)12 401 4600  
Fax. +27(0)12 401 4700  
Email. info@nersa.org.za  
www.nersa.org.za

Enquiries: Ms P Baleni (née Nzimande)  
Tel. (012) 401 4600  
Fax. (012) 401 4681

Mr Dikoba Ben Martins, MP  
Minister of Energy  
Department of Energy  
Private Bag X19  
Arcadia  
0007

By Hand



Honourable Minister

**Section 34(1) of the Electricity Regulation Act 4 of 2006 Determination - Nuclear Procurement Programme**

Your letter dated 11 November 2013 has reference.

The Energy Regulator, at its meeting held on 26 November 2013, resolved to concur with the Minister of Energy as follows:

1. *that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9.600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in Government Gazette No. 34263) ("IRP 2010-2030" or as updated)[our insertion];*
2. *electricity produced from the new generation capacity("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective;*

Regulator Members: Ms C. Khuzwayo (Chairperson) Mr N.J. Lesajane (Deputy Chairperson) \*Ms P. Baleni (née Nzimande) (Chief Executive Officer)  
\*Mr T. Bukula \*Dr. R.D. Crompton Mr O. Komane Ms KR Mkhimunyane Ms GN Whittington Banda  
\*Full-time Regulator Members

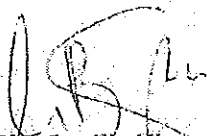
NERSA is a Regulatory Authority established in terms of the National Energy Regulator Act, 2004 (Act No 40 of 2004)

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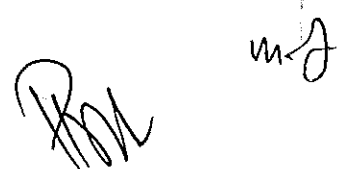
- 3. the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;
- 4. the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;
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- 6. the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, requests for proposals and/or all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;
- 7. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and
- 8. the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.

A certified copy of the NERSA decision on the Nuclear Procurement Programme is attached (see Appendix A).

Yours Sincerely,

  
 Mrs Cecilia Khuzwayo  
 Chairperson: NERSA  
 Date: 20/12/2013

Cc: Ms N Magubane                      Director General  
 Ms T Zungu                                Chief Operating Officer





Appendix A

EXTRACT OF THE MINUTES OF THE ENERGY REGULATOR MEETING NO. 96  
OF 26 NOVEMBER 2013 HELD AT KULAWULA HOUSE,  
526 MADIBA STREET, ARCADIA, PRETORIA

ITEM 1

1 Welcome

Mr Lesejane chaired the meeting in terms of clause 6.2 of the NERSA meeting rules and procedures. He declared the meeting open at 09:00 and welcomed all present.

1.1 Attendance Register

1.1.1 Members

- Mr J Lesejane Part-time Regulator Member - Deputy Chairperson
- Mr T Bukula Full-time Regulator Member
- Dr R Crompton Full-time Regulator Member
- Ms K Mthimunya Part-time Regulator Member (Teleconference)
- Ms G Whittington Banda Part-time Regulator Member (Teleconference)

1.1.2 Apologies

- Mrs C Khuzwayo (Part-time Regulator Member - Chairperson) - Private business
- Ms P Baleni (née Nzimande) (Full-time Regulator Member - CEO) - RERA conference
- Mr O Komane Part-time Regulator Member - Private business

1.1.3 Members of the public

- Mr V Gibbs Eskom

1.1.4 Management

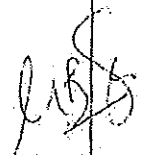
- Ms K Brits Regulator Secretary
- Mr B Chokoe Regulator Legal Counsel
- Mr C Geldard Regulator Specialist: Electricity Regulation
- Mr D Seemela HOD: Electricity Licensing and compliance
- Mr A Lees-Rolfe EM: Petroleum Pipelines Regulation
- Mr Z Lombaard Acting Chief Financial Officer

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|   |   | ACTION  |
|---|---|---|
| Ms N Maseti   | EM: Piped-Gas Regulation                                |   |
| Mr D Mashiane   | Acting HOD: Legal Advisory Services                     |   |
| Mr P Nku  | Chief Human Capital Officer                             |   |
| Ms T Jamba  | HOD: IRM  |   |
| Mr M Nyoni  | Distribution Engineer                                   |   |
| Mr S Molepo   | Senior Engineer: Electricity Infrastructure Planning    |   |
| Ms E Makhuvha   | Acting Senior Manager: Regulatory Analysis and Research |   |
| Mr K Pillay   | Adviser: Petroleum Pipelines Regulation                 |   |
| <b>1.1.5 <u>Recording Secretary</u></b>   |   |   |
| Ms F Ncube  | Senior Committee Secretary                              |   |
| <b>1.2 <u>Official Notices/Personalia</u></b>   |   |   |
| <p>Ms Brits informed the Energy Regulator that the Regulator Support Unit was in receipt of communication from the Department of Energy informing the Energy Regulator that the term of the part-time Regulator Members which was due to end on 31 December 2013 had been extended for three months to 31 March 2014.</p> |   |   |
| <b><u>ITEM 2</u></b>  |   |   |
| <b>2 <u>Adoption of Agenda</u></b>  |   |   |
| <p>The agenda was adopted subject to the withdrawal of agenda item 5.3 (approval of the reviewed methodology for determining the national free basic electricity (NFBE) rate for the compensation of Eskom by Local Authorities.</p>  |   |   |
| <b><u>ITEM 3</u></b>  |   |   |
| <b>3 <u>Declaration of Interests</u></b>  |   |   |
| <p>According to the declaration of interest forms circulated to all present at the meeting there were no interests declared regarding the agenda items.</p>   |   |   |
|   |   |  |

ITEM 5

5 Report from the Chairperson of the Electricity Subcommittee (ELS)

Mr Bukula tabled the report of the Electricity Subcommittee as indicated below.

5.2 Concurrence with the Minister of Energy: new generation capacity determination on the nuclear programme

Mr Bukula tabled the report on the Concurrence with the Minister of Energy on the new generation capacity determination on the nuclear programme.

In considering the report, various queries were raised by Members to which Mr Bukula responded as follows:

a. Overstated Forecasts

In October 2012, the Energy Regulator approved a determination from the Minister for renewable energy. Stated in the document was the fact that all the forecasts were overstated. The Energy Regulator approved despite having noted this because the relevant section requiring concurrence is section 34 which has specific regard to such matters as the new generation capacity, who the suppliers will be and the types of energy sources etc.

b. Outdated Integrated resource plan (IRP)

The matter of the IRP being outdated stood true when the previous decision was taken (27 September 2012). NERSA amongst other things needs to be consistent as the Regulator.

The Minister has however since informed NERSA in a letter dated 22 November 2013 that an updated IRP has been published on the Department of Energy's website for comment. NERSA will be commenting on the updated IRP.

c. Reasons for making the decision on the nuclear programme in 2013

The lead time for the procurement of nuclear energy is at least 10 years. The analysis indicates that the nuclear power generation capacity allocations in the determination are in line with the IRP 2010 – 2030.

d. Levelised costs of electricity

With regard to the costs on the nuclear programme being double, the Energy Regulator noted the same issue in the previous determination on

renewable energy. However, it should be noted that these issues have been raised with the Minister.

e. Mid merit gas fired power instead of nuclear power

The projected average growth over a 10 year period of the Country has been 3.5% and it is expected that this trend will continue. The argument for the use of mid merit gas fired power may hold true in two years but may not necessarily do so in 15 years time in which case the Country must be prepared for the procurement of nuclear power with due cognisance taken of the lead times required for its procurement.

**Resolution:**

Having duly considered the request for the concurrence with the Minister of Energy on the determination for new generation capacity on the nuclear programme, the Energy Regulator concurred (in terms of section 34(1)(a) of the Electricity Regulation Act 4 of 2006 ("ERA")) as stated in the Minister's letter as follows:

1. *that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy (nuclear programme), which is in accordance with the capacity allocated under the integrated resource plan for electricity 2010 – 2030 (published as GN 400 of 6 May 2011 in Government gazette No. 34263) ("IRP 2010-2030" or as updated)[our insertion];*
2. *electricity produced from the new generation capacity ("the electricity") shall be procured through tendering processes which are fair, equitable, transparent, competitive and cost-effective;*
3. *the nuclear programme shall target connection to the Grid as outlined in the IRP2010 -2030 (or as updated), taking into account all relevant factors including the time required for procurement;*
4. *the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;*
5. *the procurement agency in respect of the nuclear programme will be the Department of Energy;*
6. *the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, requests for proposals and/or*


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10.7

**ACTION**

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|--|--|
| <p>all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;</p> <p>7. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and</p> <p>8. the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.</p><br><p style="text-align: center;"><b>Commissioner of Oaths</b></p> <p style="text-align: center;"><br/> <b>RAMPHO DAVID MASHIANE</b><br/>         Attorney of the High Court of South Africa<br/>         National Energy Regulator of South Africa<br/>         Kōlawula House, 52E Vermeulen Street<br/>         Arcadia Pretoria</p> <p style="text-align: center;">Certified a true copy<br/>of the Original</p> <p style="text-align: center;">20 December 2013</p> |  |
|--|--|

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*Handwritten initials 'RM'*



**NUCLEAR PROGRAMME**

**DETERMINATION UNDER SECTION 34(1) OF THE ELECTRICITY REGULATION ACT 4 OF 2006**

**PART A**

The Minister of Energy ("the Minister"), in consultation with the National Energy Regulator of South Africa ("NERSA"), acting under section 34(1) of the Electricity Regulation Act 4 of 2006 (as amended) (the "ERA") has determined as follows:

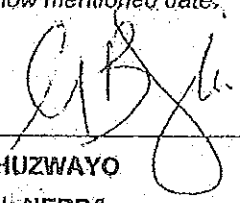
1. that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in *Government Gazette* No. 34263) ("IRP 2010-2030" or as updated) [our insertion];
2. electricity produced from the new generation capacity ("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective;
3. the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;
4. the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;
5. the procurement agency in respect of the nuclear programme will be the Department of Energy;
6. the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, requests for proposals and/or all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;
7. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and

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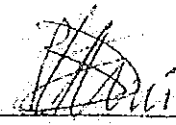
- 8. the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.

Concurrence to this Determination given by the National Energy Regulator of South Africa on the below mentioned date:


SIGNATURE: 

MS CECILIA KHUZWAYO  
CHAIRPERSON: NERSA  
DATE: 17/12/2013

Determination made by the Minister of Energy on the below mentioned date:

SIGNATURE: 

DIKOBEN BEN MARTINS, MP  
MINISTER: ENERGY  
DATE: 11/11/2013

 M.J.

PL43.4<sup>137</sup>  
/ /



**MINISTER  
ENERGY  
REPUBLIC OF SOUTH AFRICA**

Private Bag X56, Pretoria 0001, 7th Floor, 193 Menage Street, Clovis & Paul Kruger Street, Pretoria (P.O. Box 111), Cape Town 8000, Parliamentary Building 7th Floor, 120 Post Street, Cape Town. Tel: (+27 12) 406 7612, Fax: (+27 12) 353 9010  
Private Bag X9111, Cape Town 8000, Parliamentary Building 7th Floor, 120 Post Street, Cape Town. Tel: (+27 21) 469 6425, Fax: (+27 21) 469 5750

E215/9/3

Mr Zola Tsotsi  
Chairperson of the Board of Directors  
ESKOM  
P.O. Box 1091  
Johannesburg  
2000

**Section 34 Determination – Nuclear Procurement Programme**

Dear Mr Tsotsi

The National Nuclear Energy Executive Coordinating Committee (NNEECC) has made decisions related to the nuclear expansion programme such as the designation of the department of Energy as the Procuring Agency and Eskom as the Owner-Operator. In order to proceed with the procurement, the Electricity Regulation Act, No.4 of 2006 requires that new generation capacity requirements be determined in consultation with the National Energy Regulator of South Africa (NERSA).

Please find enclosed the Section 34 Determination on the Nuclear Procurement Programme as concurred to by NERSA.

Yours Sincerely,

**DIKOBÉ BEN MARTINS, MP  
MINISTER OF ENERGY**

DATE: 23.01.2014

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PL 43.5

12



**MINISTER  
ENERGY  
REPUBLIC OF SOUTH AFRICA**

Private Bag X96, Pretoria 0001, 7th Floor, 192 Venetia Street, C/o Visage & Paul Kruger Street, Pretoria 0001, Tel: (+27 12) 408 7612, Fax: (+27 12) 323 5046  
Private Bag X0111, Cape Town, 8000, Parliament Buildings 7th Floor, 120 Ficks Street, Cape Town, Tel: (+27 21) 419 6425, Fax: (+27 21) 469 6983

E2/5/9/3

Mr Malusi Gigaba  
Minister of Public Enterprises  
Private Bag x152  
Pretoria  
0001

**Section 34 Determination – Nuclear Procurement Programme**

Dear Colleague

The National Nuclear Energy Executive Coordinating Committee (NNECC) has made decisions related to the nuclear expansion programme such as the designation of the department of Energy as the Procuring Agency and Eskom as the Owner-Operator. In order to proceed with the procurement, the Electricity Regulation Act, No.4 of 2006 requires that new generation capacity requirements be determined in consultation with the National Energy Regulator of South Africa (NERSA).

Please find enclosed the Section 34 Determination on the Nuclear Procurement Programme as concurred to by NERSA.

Yours Sincerely,

**DIKOBÉ BEN MARTINS, MP  
MINISTER OF ENERGY**

DATE: 23.01.2014



OFFICE OF THE PRESIDENT  
KANTOOR VAN DIE PRESIDENT

PRESIDENTIAL ACT NO 373

In terms of Section 82 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), I hereby approve that the agreement regarding the Co-operation between the Republic of South Africa and the United States of America concerning the Peaceful Uses of Nuclear Energy, the English text of which is attached hereto, be entered into with the United States of America, and I furthermore authorise the Minister of Mineral and Energy Affairs to take the necessary steps in this regard.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town on this 23 day of August One thousand Nine hundred and Ninety-five

**N. R. MANDELA**

PRESIDENT

**T. M. MBEKI**

EXECUTIVE  
DEPUTY PRESIDENT

**R. W. DE KLERK**

EXECUTIVE  
DEPUTY PRESIDENT

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(Z 19E)

16



PRESIDENT'S MINUTE NO. 289

In terms of section 231 of the Constitution of the Republic of South Africa, 1996, I hereby approve that the attached Agreement between the Government of the Republic of South Africa and the Government of the Russian Federation on Strategic Partnership and Cooperation in the Fields of Nuclear Power and Industry be entered into, and I hereby authorise the Minister of Energy to sign the Agreement.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria..... on this 20<sup>th</sup>..... day of September. Two Thousand and Fourteen.

PRESIDENT

MINISTER OF THE CABINET

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14



PRESIDENT'S MINUTE NO. 363

( In terms of section 231 of the Constitution of the Republic of South Africa, 1996, I hereby approve that the attached Agreement on Peaceful Uses of Nuclear Energy between the Republic South Africa and Republic of Korea be entered into, and I hereby authorise the Minister of Energy to sign the agreement.

Given under my Hand and the Seal of the Republic of South Africa at  
.....PRETORIA.....on this 5<sup>th</sup> day of OCTOBER....., Two thousand and  
Ten.

A handwritten signature in black ink, appearing to be "J. M. Zuma".

( PRESIDENT

A handwritten signature in black ink, appearing to be "E. Dlamini".

MINISTER OF THE CABINET

Handwritten initials "RML" in black ink.

Handwritten initials "m.d." in black ink.

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(Z 19E)

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PRESIDENT'S MINUTE NO. 360

In terms of section 231 of the Constitution of the Republic of South Africa, 1996, I hereby approve that the attached Agreement between the Government of the Republic of South Africa and the Government of the People's Republic of China on Cooperation in the Field of Civil Nuclear Energy Projects be entered into, and I hereby authorise the Minister of Energy to sign the Agreement.

Given under my Hand and the Seal of the Republic of South Africa at CAPE TOWN on this 05 day of November Two Thousand and Fourteen.

PRESIDENT

MINISTER OF THE CABINET



PL43.10 143  
17  
17.1



MINISTER  
ENERGY  
REPUBLIC OF SOUTH AFRICA

Private Bag 905, Pretoria 0001, 7th Floor, 183 Victoria Street, C/A Maseko & Partners/9th Floor, Pretoria 0001 Tel: (+27 12) 400 7612 Fax: (+27 12) 400 5054  
Private Bag X3111, Cape Town 8000 Parliamentary Building, 7th Floor, 126 Main Street, Cape Town 8000 Tel: (+27 21) 460 9425 Fax: (+27 21) 460 3320

His Excellency, Mr J G Zuma  
President of the Republic of South Africa  
Private Bag X1000  
PRETORIA  
0001

Honourable Mr President

**Explanatory Note for the Delays in Signing the Agreement between the Government of the Republic of South Africa and the Government of the Russian Federation on Strategic Partnership and Cooperation in the Fields of Nuclear Power and Industry (Framework Agreement)**

Your Excellency, I write to inform you that the Framework Agreement between South Africa and the Russian Federation (Parties) is now ready for signature. The Framework Agreement was ready for signature in November 2013 during the time of my predecessor. However, prior to signature of the Framework Agreement, several technical issues were identified. It was then decided to postpone the signing of the Framework Agreement until such time when these technical challenges would be resolved.

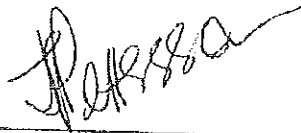
Mr President, I am today happy to report that these technical issues have now been resolved and therefore South Africa and the Russian Federation are ready to sign the Framework Agreement.

*[Handwritten signature]*

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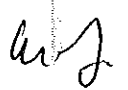
In that regard Mr President, I am sending this submission to request your approval, by signature on the attached Minute, for me to sign the Framework Agreement with the Russian Federation on the margins of the 58<sup>th</sup> IAEA General Conference in Vienna. All preparations between the two countries have been completed for the signing and finalization of the road map during this bilateral meeting.

Yours respectfully



(MS) TINA JOEMAT-PETTERSSON, MP  
MINISTER OF ENERGY

DATE: 19/9/2014



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18.1

## EXPLANATORY MEMORANDUM

The Government of the Republic of South Africa and the Government of the Russian Federation (hereinafter referred to as the "Parties" and separately as a "Party") through this Agreement seek to create a foundation for the strategic partnership and cooperation in the fields of nuclear power and industry for peaceful uses only between the Parties, aimed at the successful implementation of the national plan for the power sector development of the Republic of South Africa, based on the principles of equality and mutual benefit. Cooperation within the framework of this Agreement shall be implemented strictly in compliance with the Parties' respective national legislations and with respect to international treaties, to which the states of the Parties are signatories.

The Parties shall create the conditions for the development of strategic cooperation and partnership in areas detailed in Article 3. The Parties collaborate in areas as outlined in Article 3 of this Agreement which are needed for the implementation of priority joint projects of construction of two new NPP units with VVER reactors with the total capacity of up to 2,4 GW at the site selected by the South African Party (either Koeberg NPP, Thyspunt or Bantamsklip) in the Republic of South Africa and other NPP units of total capacity up to 7,2GW at other identified sites in the Republic of South Africa and construction of a multi-purpose research reactor at the research center located at Pelindaba, Republic of South Africa. The mechanism of implementation of these priority projects will be governed by separate intergovernmental agreements, in which the Parties shall agree on the sites, parameters and installed capacity of NPP units planned to be constructed in the Republic of South Africa. Cooperation in areas as outlined in Article 3 of this Agreement, will be governed by separate agreements between the Parties, the Competent Authorities, as well as by agreements (contracts) between Russian and (or) South African authorized organizations, which are involved by the Competent Authorities of the Parties for the implementation of cooperation in the framework of this Agreement. The Competent Authorities of the Parties can, by mutual consent, involve third countries' organizations for the implementation of particular cooperation areas in the framework of this Agreement. The sources and format of financing of the activities outlined in Article 3 of this Agreement will be agreed on and fixed by separate agreements between the Parties.

The Competent Authorities responsible for the implementation of this Agreement shall be, in the case of Republic of South Africa, the Department of Energy, and, in the case of the Russian Federation, the State Atomic Energy Corporation "Rosatom" (for all areas of cooperation) and the Federal Service for Ecological, Technological and Atomic Inspectorate (for support of enhancement of the regulatory framework in the field of nuclear and radiation safety in the Republic of South Africa, including development of relevant legal base, licensing system and regulation). The Parties shall establish a Joint Coordination Committee to provide guidance, to coordinate and to control the implementation of this Agreement. This Agreement shall enter into force on the date of the receipt through diplomatic channels of the final written notification of the completion by the Parties of internal government procedures necessary for its entry into force. The Agreement shall remain in force for a period of twenty (20) years and shall automatically be renewed for a further period of ten (10) years unless terminated by either Party giving 1 (one) year written notice in advance through diplomatic channels to the other Party of its intention to terminate it. The Agreement falls within the scope of section 231(2) of the Constitution and Parliamentary approval is required. It is intended that the Agreement will be signed by the Parties on 25 November 2013.



18.2

**AGREEMENT**

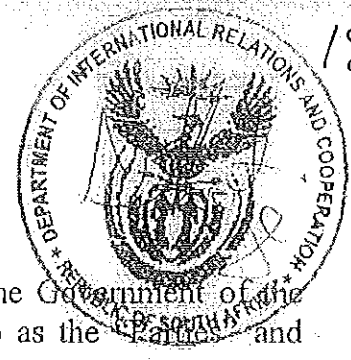
**between the Government of the Russian Federation  
and the Government of the Republic of South Africa**

**on Strategic Partnership and Cooperation in the Fields of Nuclear  
Power and Industry**

*RM*

*us*

T. Kotzé  
STATE LAW ADVISER  
(INTERNATIONAL LAW)  
24 November 2013



The Government of the Russian Federation and the Government of the Republic of South Africa, hereinafter jointly referred to as the Parties and separately as a "Party";

CONSIDERING that both States are members of the International Atomic Energy Agency (hereinafter referred to as "the IAEA") and the Nuclear Suppliers Group, as well as Parties to the Treaty for Non-Proliferation of Nuclear Weapons as of July 1, 1968;

ACKNOWLEDGING the Agreement between the Government of the Russian Federation and the Government of the Republic of South Africa on Cooperation in the field of Peaceful Uses of Nuclear Energy as of November 20, 2004;

TAKING INTO ACCOUNT the intentions of the Government of the Republic of South Africa for the implementation of the large-scale national plan for the power sector development, involving the construction by 2030 of new nuclear power plant (hereinafter referred to as "NPP") units in the Republic of South Africa;

NOTING the rights and obligations of the Parties under the Agreement between the Government of the Russian Federation and the Government of the Republic of South Africa on the Promotion and Reciprocal Protection of Investments as of November 28, 1998;

REFERRING to the Joint Presidential Statement on establishment of comprehensive strategic partnership between the Russian Federation and the Republic of South Africa of March 26, 2013;

AIMING to further expand and deepen the mutually beneficial economic, scientific and technical cooperation between the Russian Federation and the Republic of South Africa in the fields of nuclear energy and industry for peaceful uses, based on the principles of equality, non-interference in the internal affairs and respect of the sovereignty of both States; and

CONVINCED that legal fixation of the strategic partnership in the fields of nuclear power and industry will contribute to the development of cooperation in other areas between the Russian Federation and the Republic of South Africa;

Hereby agree as follows:

Handwritten signatures and initials, including a large signature that appears to be 'RML' and other initials.

## Article 1

This Agreement creates the foundation for the strategic partnership and cooperation in the fields of nuclear power and industry for peaceful uses between the Parties, aimed at the successful implementation of the national plan for the power sector development of the Republic of South Africa, based on the principles of equality and mutual benefit.

## Article 2

Cooperation within the framework of this Agreement shall be implemented strictly in compliance with the Parties' respective national legislations and with respect to international treaties, to which the states of the Parties are signatories.

## Article 3

The Parties shall create the conditions for the development of strategic cooperation and partnership in the following areas:

- (i) development of a comprehensive nuclear new build program for peaceful uses in the Republic of South Africa, including enhancement of key elements of nuclear energy infrastructure in accordance with IAEA recommendations;
- (ii) design, construction, operation and decommissioning of NPP units based on the VVER reactor technology in the Republic of South Africa, with total installed capacity of about 9.6 GW;
- (iii) design, construction, operation and decommissioning of the multi-purpose research reactor in the Republic of South Africa;
- (iv) development of joint business in the fields of radioisotopes manufacturing and global marketing, including the involvement of the multi-purpose research reactor facilities planned for construction in the Republic of South Africa;
- (v) enhancement and implementation of the program on the development of South-African human resources for work at the nuclear facilities, including NPPs, in the Republic of South Africa;
- (vi) support the enhancement of the regulatory framework in the field of nuclear and radiation safety in the Republic of South Africa, including development of relevant legal base, licensing system and regulation;
- (vii) strengthening of nuclear radiation safety system in the field of peaceful uses of nuclear energy in the Republic of South Africa;

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- (viii) support the enhancement of the industrial base development program essential for the re-development of nuclear energy in the Republic of South Africa;
- (ix) localization of the manufacture of components for the NPP equipment in the Republic of South Africa;
- (x) assist in the integration of the developed nuclear joint manufacturing capacities and capabilities in the supply chain as well as for the joint marketing and promotion of the produced products to the third countries markets;
- (xi) enhancement of security and assurance of physical protection of nuclear facilities in the Republic of South Africa;
- (xii) strengthening and adaptation of nuclear and radiological emergency response system in the Republic of South Africa;
- (xiii) radioactive waste management in the Republic of South Africa;
- (xiv) rendering of the nuclear fuel cycle front-end services to secure the needs of the new units of NPPs to be built in the Republic of South Africa, including the accession of the respective South-African organization to the International Uranium Enrichment Center;
- (xv) support of feasibility activities for site investigation for NPP construction in the Republic of South Africa; and
- (xvi) activities in other areas that may be agreed upon by the Parties in writing through diplomatic channels.

#### Article 4

1. The Parties collaborate in areas as outlined in Article 3 of this Agreement which are needed for the implementation of priority joint projects of construction of two new NPP units with VVER reactors with the total capacity of up to 2,4 GW at the site selected by the South African Party (either Koeberg NPP, Thyspunt or Bantamsklip) in the Republic of South Africa and other NPP units of total capacity up to 7,2GW at other identified sites in the Republic of South Africa and construction of a multi-purpose research reactor at the research center located at Pelindaba, Republic of South Africa. The mechanism of implementation of these priority projects will be governed by separate intergovernmental agreements, in which the Parties shall agree on the sites, parameters and installed capacity of NPP units planned to be constructed in the Republic of South Africa.

2. The Parties shall create such conditions as to issue timely permits (licenses) for nuclear energy and industry capacities design, construction,

commissioning, operation and decommissioning, as well as related export and import of facilities, equipment, technologies, nuclear and radioactive materials, special non-nuclear materials and services in the field of peaceful uses of nuclear energy in accordance with the Parties' respective national legislations.

Article 5

1. For the purpose of implementing this Agreement each Party shall designate competent authorities:

(i) For the Russian Party the Competent Authority shall be the State Atomic Energy Corporation "Rosatom" (for all areas of cooperation) and the Federal Service for Ecological, Technological and Atomic Inspectorate (for support of enhancement of the regulatory framework in the field of nuclear and radiation safety in the Republic of South Africa, including development of relevant legal base, licensing system and regulation);

(ii) For the South-African Party the Competent Authority shall be the Department of Energy of the Republic of South Africa.

2. The Parties shall promptly notify each other in writing through diplomatic channels of any change of Competent Authorities, their titles or functions or designation of new Competent Authorities.

Article 6

1. The Parties shall establish a Joint Coordination Committee to provide guidance, to coordinate and to control the implementation of this Agreement.

2. Each Party shall appoint the representatives of the relevant government institutions to the Joint Coordination Committee.

3. Representatives of the Parties' Competent Authorities shall be appointed as the co-chairs of the Joint Coordination Committee. The co-chairs of the Joint Coordination Committee shall develop and agree on the Term of Reference for the Committee.

4. In three years of entry into force of this Agreement the co-chairs of the Joint Coordination Committee shall make comprehensive review of the progress in the implementation of this Agreement and provide appropriate recommendations to the Competent Authorities of the Parties regarding further implementation of this Agreement.

*Handwritten signatures and initials, including "RML" and "M.J."*



Article 7

Cooperation in areas as outlined in Article 3 of this Agreement, will be governed by separate agreements between the Parties, the Competent Authorities, as well as by agreements (contracts) between Russian and (or) South African authorized organizations, which are involved by the Competent Authorities of the Parties for the implementation of cooperation in the framework of this Agreement. The Competent Authorities of the Parties can, by mutual consent, involve third countries' organizations for the implementation of particular cooperation areas in the framework of this Agreement.

Article 8

The sources and format of financing of the activities within the implementation of cooperation areas as outlined in Article 3 of this Agreement will be agreed on after consultations and fixed by separate agreements between the Parties.

Article 9

For the purpose of implementation of this Agreement the South African Party will facilitate the provision of a special favorable regime in determining tax and non-tax payments, fees and compensations, which will be applied to the projects implemented in the Republic of South Africa within the areas of cooperation as outlined in Article 3 of this Agreement, subject to its domestic legislation.

Article 10

Implementation of the areas of cooperation as outlined by Article 3 of this Agreement shall be with gradual increase and shall be mutually agreed upon by the Competent Authorities of the Parties. The terms for the scope of supplies of equipment, materials and services for the projects developed and implemented in terms of the framework of this Agreement shall be provided by South African enterprises, and also by joint ventures to be set up for this purpose.

Article 11

The conditions for the protection, use and distribution of the Intellectual Property rights under this Agreement shall be determined in agreements between

the Parties and agreements (contracts) between Russian and (or) South African authorized organizations concluded in accordance with Article 7 of this Agreement.

Article 12

1. Information specified as STATE SECRET of the Russian Federation or CLASSIFIED INFORMATION of the Republic of South Africa shall not be exchanged under this Agreement.

2. Information transferred under this Agreement or created from the implementation thereof and regarded by the transferring Party as CONFIDENTIAL shall be clearly marked as such.

3. The Party transferring the information under this Agreement shall mark such information in the Russian language as « Для служебного пользования » and in English language as "CONFIDENTIAL".

4. The Party receiving information marked in the Russian language as «Для служебного пользования» and in English language as "CONFIDENTIAL" shall protect it at a level equivalent to the level of protection applied by the transferring Party to such information. Such information shall not be disclosed or transferred to a third party without the written consent of the transferring Party.

5. The Parties shall limit the number of individuals having access to information which the transferring Party regards as confidential.

6. Such information shall be treated in the Russian Federation as OFFICIAL INFORMATION of LIMITED DISTRIBUTION and shall be protected in accordance with the legislation of the Russian Federation.

7. Such information shall be treated in the Republic of South Africa as «RESTRICTED INFORMATION» and shall be protected in accordance with the legislation of the Republic of South Africa.

8. All information transferred under this Agreement shall be used exclusively in accordance with this Agreement.

Article 13

1. Nuclear material, equipment, special non-nuclear material and relevant technology, as well as material (goods) of dual purpose shall be exported under this Agreement in accordance with the Parties' obligations, arising from the Treaty on Non-proliferation of Nuclear Weapons of 1 July, 1968 and other international treaties that contain provisions on export control to which the Russian Federation and/or the Republic of South Africa are parties.

2. Nuclear material, equipment, special non-nuclear material and relevant technology received by the Republic of South Africa under this Agreement, and nuclear material, special non-nuclear material, facilities and equipment produced thereof or as a result of their use, shall—

(i) not be used for manufacturing of nuclear weapons and other nuclear explosive devices or for achieving any other military purpose;

(ii) be under the IAEA safeguards in accordance with the Agreement for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons between the Republic of South Africa and the IAEA of 16 September, 1991 (INFCIRC/394) throughout the entire period of their location under the jurisdiction of the Republic of South Africa;

(iii) be ensured with measures of physical protection at levels not lower than the levels recommended by the IAEA document "The Physical Protection of Nuclear Material and Nuclear Facilities" (INFCIRC/225/Rev.5);

(iv) be re-exported or transferred from the jurisdiction of the Republic of South Africa to any other country only with prior written consent of the Russian Federation and under above-mentioned conditions.

3. Nuclear material transferred to the Republic of South Africa under this Agreement shall not be enriched to 20% or more in the isotope uranium-235.

4. Nuclear material transferred to the Republic of South Africa under this Agreement shall not be enriched and reprocessed without prior written consent of the Russian Federation.

5. Equipment and material (goods) of dual purpose and related technology received from the Russian Federation under this Agreement and any of their reproduced copies, shall—

(i) be used only for the declared purposes, unconnected with any activities related to the manufacturing of nuclear explosive devices;

(ii) not be used in nuclear fuel cycle related activities that are not under the IAEA safeguards;

(iii) not be copied, modified, re-exported or transferred to any third party without the written consent of the Russian competent authority in compliance with the legislation of the Russian Federation.

6. The Parties shall cooperate on matters of export control of equipment, material (goods) and relevant technology. Control over the use of supplied nuclear and special non-nuclear material, equipment and relevant technology shall be executed by means agreed upon through consultations between the Parties.

Article 14

Technology and facilities for chemical reprocessing of irradiated fuel, isotopic uranium enrichment and heavy water production, their major components or any items produced thereof, as well as uranium enriched to 20 percent or more in uranium-235, plutonium and heavy water shall not be transferred under this Agreement.

Article 15

1. The authorized organization of the South African Party at any time and at all stages of the construction and operation of the NPP units and Multi-purpose Research Reactor shall be the Operator of NPP units and Multi-purpose Research Reactor in the Republic of South Africa and be fully responsible for any damage both within and outside the territory of the Republic of South Africa caused to any person and property as a result of a nuclear incident occurring at NPP or Multi-purpose Research Reactor and also in relation with a nuclear incident during the transportation, handling or storage outside the NPP or Multi-purpose Research Reactor of nuclear fuel and any contaminated materials or any part of NPP or Multi-purpose Research Reactor equipment both within and outside the territory of the Republic of South Africa. The South African Party shall ensure that, under no circumstances shall the Russian Party or its authorized organization nor Russian organizations authorized and engaged by their suppliers be liable for such damages as to the South African Party and its Competent authorities, and in front of its authorized organizations and third parties.

2. Nuclear liability due to nuclear incident occurring when handling and transporting the nuclear fuel shall be transferred from the authorized Russian organization to the authorized South African organization after the physical

handing over of the nuclear fuel at a place determined in separate agreements (contracts) as concluded in accordance with Article 7 of this Agreement.

3. Should the Vienna Convention on Civil Liability for Nuclear Damage enter into force for the Republic of South Africa, the issues of civil liability for nuclear damage under this Agreement for the South African Party shall be regulated by this Vienna Convention.

Article 16

The Parties shall settle all disputes arising from the interpretation or implementation of this Agreement amicably by Parties' Competent Authorities consultations or negotiations through diplomatic channels. In case of any discrepancy between this Agreement and agreements (contracts), concluded under this Agreement, the provisions of this Agreement shall prevail.

Article 17

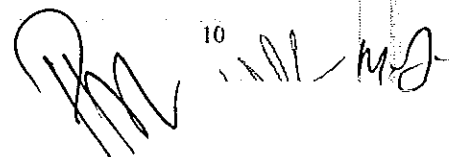
1. This Agreement shall enter into force on the date of the receipt through diplomatic channels of the final written notification of the completion by the Parties of internal government procedures necessary for its entry into force.

2. This Agreement shall remain in force for a period of twenty (20) years and shall automatically be renewed for a further period of ten (10) years unless terminated by either Party giving 1 (one) year written notice in advance through diplomatic channels to the other Party of its intention to terminate it.

3. Upon the receipt by one of the Parties of the written notification from the other Party on the termination of this Agreement, the Parties shall hold consultations immediately on the possibility of implementing all obligations of the Parties under this Agreement, in accordance with the domestic law of the Parties.

4. The termination of this Agreement shall not affect the rights and obligations of the Parties which have arisen as a result of the implementation of this Agreement before its termination, unless the Parties agree otherwise.

5. This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through diplomatic channels. Such amendments shall form an integral part of this Agreement.

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6. The termination of this Agreement shall not affect the performance of any of the obligations under agreements (contracts) which arise during the validity period of this Agreement and are uncompleted at the moment of such termination, unless the Parties agree otherwise.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in two originals in the Russian and English languages, all texts being equally authentic. In the case of divergence of interpretation, the English text shall be used.

Done at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 201\_\_.

For the Government  
of the Russian Federation

For the Government  
of the Republic of South Africa





energy

Department:  
Energy  
REPUBLIC OF SOUTH AFRICA

TO : MS. TINA JOEMAT-PETTERSSON  
MINISTER

FROM : MR THABANE ZULU  
DIRECTOR-GENERAL


FILE REF : E2/5/9/3

SUBJECT : DETERMINATION UNDER SECTION 34 (1) OF THE  
ELECTRICITY REGULATION ACT NO.4 OF 2006 – NUCLEAR  
PROCUREMENT PROGRAMME

DATE : 01 DECEMBER 2015

#### 1. PURPOSE

- 1.1 To request the Minister to approve the publication of the Section 34 (1) Determination of nuclear procurement programme in government gazette.
- 1.2 To request the Minister to sign letters to the Minister of Public Enterprises as well as the Chairperson of Eskom informing them of this development.
- 1.3 To request Minister to approve that the section 34 (1) Determination be made part of the court record in order to show that the applicant case was based on false assumptions.

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## 2. SUMMARY

- 2.1 Government policy with regards to nuclear energy is reinforced by the Integrated Resource plan (2010 -2030) according to which the required contribution of nuclear power is 9600 MW. The Minister of Energy is empowered under section 34 of the Electricity Regulation Act, 2006 to make a determination to give effect to the implementation of the IRP;
- 2.2 The determination required the concurrence of the National Energy Regulator (NERSA). Following the request from the then Minister of Energy, Minister Ben Martins, NERSA has indicated its concurrence (**Annexure 1**).

## 3. ANALYSIS AND FINDINGS

- 3.1 The Nuclear Energy Policy of 2008 represents the South African government's vision for the development of an extensive nuclear energy programme. The policy is strengthened by the Integrated Resource Plan (2010 -2030), which states that addition 9 600 MWe new nuclear generation is required.
- 3.2 According to Section 34 (1) of the Electricity Regulation Act, the Minister may, in consultation with the Regulator –
- (a) determine that new generation capacity is needed to ensure the continued uninterrupted supply of electricity ;
  - (b) determine the types energy sources from which electricity must be generated, the percentages of electricity that must be generated from such sources;
  - (c) determine that electricity thus produced may only be sold to the persons or in a manner set out in such a notice;
  - (d) determine that electricity thus produced must be purchased by the persons set out in such a notice;
  - (e) require that new generation capacity must –
    - (i) be established through a tendering procedure which is fair, equitable, transparent competitive and cost-effective;
    - (ii) provide for private sector participation.
- 3.3 In a letter dated 11 November 2013 the Minister requested NERSA's concurrence on the determination of the nuclear procurement programme (**Annexure 2**). At a

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meeting of 26 November 2013, NERSA resolved to concur with the Minister of Energy on the determination (**Annexure 3**).

3.4 Although the determination process was completed in 2014 with NERSA and signed by the previous Minister of Energy, Minister Ben Martins, the determination was not gazetted due to change in the leadership in the Ministry and to further conduct some work prior to gazetting. As a result there has been progress on the nuclear build work done by the Department and relevant stakeholders, it is therefore deemed appropriate to publish it. The determination needs to be gazetted (**Annexure 4**).

3.5 The publishing of the determination has become urgent as the Department is facing litigation by EarthLife Africa Johannesburg and the Southern African Faith Communities Environment Institute in the High Court, Western Cape Division. In the Notice of Motion (**Annexure 5**) the applicants claim that the Minister has not published a Section 34 determination nor conducted a public participation process and therefore any decisions to facilitate, organise, commence or proceed with the procurement of nuclear new generation capacity is unlawful.

3.6 During the meeting of 27 November 2015 to brief the legal counsel defending the Department against the Applicant (Earth Life Africa and the Southern African Faith Communities Environment Institute). The legal counsel requested to include the determination when filing the record for the court papers. The legal counsel advised that the inclusion of the determination in the answering affidavit will weaken the case for the applicant as it will show that their application is based on false assumption.

3.7 Eskom as the owner and operator of the nuclear plant is critical in the implementation of the nuclear programme, as a result the Minister of Public Enterprises and Eskom needs to be informed about the determination. The letters has been drafted for signature (**Annexures 6 and 7**).

#### 4. FINANCIAL IMPLICATIONS

4.1 Cost of publication of the determination in the government gazette.

#### 5. CONSULTATION/PROJECT TEAM

National Energy Regulator of South Africa.

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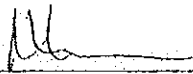
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## 6. RECOMMENDATION

It is recommended that the Minister:

- 6.1 approves the publication of the Section 34 (1) Determination of the Nuclear Procurement Programme in government gazette.
- 6.2 signs letters to the Minister of Public Enterprises as well as the Chairperson of Eskom informing them of this development.
- 6.3 approves that the section 34(1) Determination be made part of the court record in order to show that the applicant case was based on false assumptions.

### MEMORANDUM PREPARED BY:

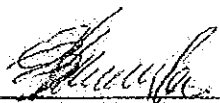


MS LERATO MAKGAE  
CD: NUCLEAR POLICY  
DATE: 02/12/2015

### REVIEWED AND SUPPORTED BY:



MS SAANDHRI NAIDOO  
D: LEGAL SERVICES  
DATE: 02/12/2015



MR ZIZAMELE MBAMBO  
DDG: NUCLEAR ENERGY  
DATE: 2015-12-02

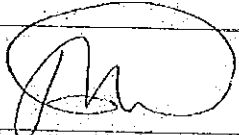


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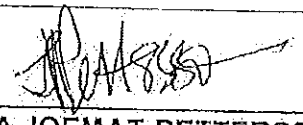
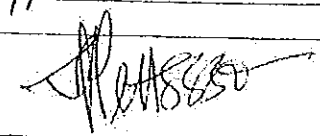
6. RECOMMENDATION

It is recommended that the Minister:

- 6.1 approve the Section 34 (1) Determination of the Nuclear Procurement Programme for publication in government gazette.
- 6.2 sign letters to the Minister of Public Enterprises as well as the Chairperson of Eskom informing them of this development.
- 6.3 approves that the section 34(1) Determination be made part of the court record in order to show that the applicant case was based on false assumptions.

|   |  |
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| <br><hr/> <b>MR THABANE ZULU</b><br><b>DIRECTOR-GENERAL</b><br><b>DATE: 04/12/2015</b> | <b>RECOMMENDED / NOT RECOMMENDED / COMMENTS</b><br><hr/><br><hr/><br><hr/> |
|---|--|

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| <hr/> <b>MS THEMBSILE MAJOLA, MP</b><br><b>DEPUTY MINISTER OF ENERGY</b><br><b>DATE:</b> | <b>SUPPORTED /NOT SUPPORTED / COMMENTS</b><br><hr/><br><hr/><br><hr/> |
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| <br><hr/> <b>MS TINA JOEMAT-PETTERSSON,</b><br><b>MP</b><br><b>MINISTER OF ENERGY</b><br><b>DATE: 8/12/2015</b> | <b>APPROVED / NOT APPROVED / COMMENTS</b><br><hr/> <p style="text-align: center;"><i>approved</i></p> <hr/>  |
|--|--|

*Handwritten signature/initials*



MINISTER  
ENERGY  
REPUBLIC OF SOUTH AFRICA

E2/5/9/3

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Dr Ben Ngubane  
Chairperson of the Board of Directors  
ESKOM  
P O Box 1091  
Johannesburg  
2000

**Section 34 Determination – Nuclear Procurement Programme**

Dear Mr Ngubane

The National Nuclear Energy Executive Coordinating Committee (NNEECC) has made decisions related to the nuclear expansion programme such as the designation of the department of Energy as the Procuring Agency and Eskom as the Owner-Operator. In order to proceed with the procurement, the Electricity Regulation Act, No.4 of 2006 requires that new generation capacity requirements be determined in consultation with the National Energy Regulator of South Africa (NERSA).

Please find enclosed the Section 34 Determination on the Nuclear Procurement Programme as concurred to by NERSA.

Yours Sincerely,

(MS) TINA JOEMAT-PETTERSSON, MP  
MINISTER OF ENERGY

DATE: 8/12/2015.



MINISTER  
ENERGY  
REPUBLIC OF SOUTH AFRICA

E2/5/9/3

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Private Bag X9111, Cape Town 8000, Parliamentary Building, 7<sup>th</sup> floor, 120 Plain Street, Cape Town 8000, Tel: (+27 21) 469 6425, Fax: (+27 21) 469 5950

Ms Lynne Brown

Minister of Public Enterprises

Private Bag X152

Pretoria

0001

**Section 34 Determination – Nuclear Procurement Programme**

Dear Colleague

The National Nuclear Energy Executive Coordinating Committee (NNEECC) has made decisions related to the nuclear expansion programme such as the designation of the Department of Energy as the Procuring Agency and Eskom as the Owner-Operator. In order to proceed with the procurement, the Electricity Regulation Act, No.4 of 2006 requires that new generation capacity be determined in consultation with the National Energy Regulator of South Africa (NERSA).

Please find enclosed the Section 34 Determination on the Nuclear Procurement programme as concurred to by NERSA.

Yours Sincerely,

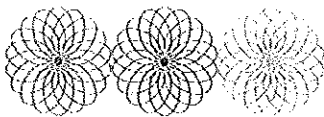
(MS) TINA JOEMAT-PETTERSSON, MP

MINISTER OF ENERGY

DATE: 8/12/2015.

PL44

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Your Reference: NERSA 7/5 COO

My Reference: AP/LP/ELA-JHB SAFCEI

## URGENT

THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

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P.O. Box 40343  
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Facsimile: 012 401 4700

Email: [info@nersa.org.za](mailto:info@nersa.org.za); [zethu.kapika@nersa.org.za](mailto:zethu.kapika@nersa.org.za);  
[elizabeth.taylor@nersa.org.za](mailto:elizabeth.taylor@nersa.org.za); [charles.hlebel@nersa.org.za](mailto:charles.hlebel@nersa.org.za)

15 January 2016

THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

Re: Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others  
Case No. 19529/15

1. We refer to our letter to NERSA dated 26 July 2015 wherein we advised that we represent Earthlife-Africa Johannesburg and the South African Faith Communities' Environmental Institute ('our clients'), to our clients' Notice of Motion and supporting papers served on your offices on 20 October 2015, and to the Determination under s34(1) of the Electricity Regulation Act, 2006 (ERA) published in the *Gazette* on 21 December 2015 (GN1268 GG 39541), signed on 11 November 2013 by the then Minister

of Energy Dikobe Ben Martins, and on 17 December 2013 by Cecilia Khuzwayo (Chairperson: NERSA) ('nuclear s34 Determination').

2. In our 26 July 2015 letter, we advised NERSA that our clients were concerned that the Minister of Energy ('the Minister') was proceeding with the procurement of nuclear energy in a manner that was not constitutionally compliant with established procurement principles and without properly putting in place the prerequisites for such nuclear new generation capacity procurement, including in terms of s34 of the ERA. We informed NERSA that our clients had instructed us to consider launching an urgent legal challenge to the procurement process. In this respect, we asked for urgent responses to a number of questions, including:

- 2.1. Whether NERSA had been consulted and had given its concurrence in respect of any determination/s in terms of sections 34(1)(a) and (b) of the ERA that new generation capacity is needed, that electricity must be generated from nuclear energy sources, and determining the percentages of electricity that must be generated from such nuclear sources; and
- 2.2. Whether NERSA had been consulted and had given its concurrence in respect of any determination by the Minister that the purportedly required new nuclear generation capacity must be established through a tendering system which is fair, equitable, transparent, competitive and cost-effective, that is system-specifically created for the procurement of nuclear new generation capacity, in terms of section 34(1)(e), as read together with section 217 of the Constitution.

NERSA were also requested, if any such decisions had been made, to provide us with evidence (minutes, records, decision-memoranda, etc.) of the consultation and concurrence. We advised further in our letter that if no response was received by 7 August 2015, for the purposes of any court proceedings initiated it would be assumed that NERSA was not consulted and did not provide concurrence on any s34 Determinations by the Minister regarding nuclear energy and the procurement thereof.

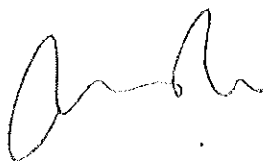
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3. While we received a letter dated 30 July 2015 from NERSA confirming that our letter would be brought to the attention of the Acting CEO Mr. Paseka Nku, no further reply was ever received.
4. Our clients subsequently launched their legal challenge in October 2015 under case number 19529/15, and NERSA was cited as the 3<sup>rd</sup> Respondent.
5. Our clients were aggrieved to learn in December 2015 that the 2013 nuclear s34 Determination had been deliberately withheld from the public (as stated in the Department of Energy's Media Statement titled *Progress with the Nuclear New Build Programme* dated 26 December 2015) until published by notice in the *Gazette* on 21 December 2015 and served on us by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as part of the Rule 53 Record on 23 December 2015.
6. As a consequence, our clients have only recently been in a position to consider and take advice on the nuclear s34 Determination. In our clients' view, the making of the nuclear s34 Determination in secret and without public participation, as well as the deliberate withholding of this Determination from the public for a period of two years, was unlawful and unconstitutional (violating *inter alia* the requirements of open, accountable and transparent government and reasonable, lawful, and procedurally fair administrative action). We are instructed to notify you, as we hereby do, that our clients intend exercising their rights in terms of Rule 53(4) to amend, add to and vary their Notice of Motion and to supplement their supporting affidavits in order to review the nuclear s34 Determination, which was taken with the concurrence of NERSA.
7. However, in advance of us doing so, we require NERSA to provide us, by 1 February 2016, with the relevant Record relating to its concurrence in the 2013 nuclear s34 Determination and the decision to withhold it from the public. Upon receipt of this Record or upon expiry of the time-frame mentioned above, we will amend, add to or vary the relevant portion of our clients' Notice of Motion and supplement their supporting affidavits as appropriate.
8. Our clients reserve their rights.

Handwritten signature and initials, possibly 'RMS' and 'NED', in the bottom right corner.

Yours sincerely



---

Adrian Leonard Pole



**Adrian Pole**

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**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 15 January 2016 06:02 PM  
**To:** 'info@nersa.org.za'; 'zethu.kapika@nersa.org.za'; 'elizabeth.taylor@nersa.org.za';  
'charles.hlebela@nersa.org.za'  
**Subject:** Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others  
**Attachments:** ELA-JHB SAFCEI Letter to Nersa 15 Jan 2016 (Case No 19429-15).pdf

Dear NERSA

Please find attached our legal correspondence for the urgent attention of the National Energy Regulator of South Africa, including the Chairperson and CEO as appropriate.

Yours sincerely

*Adrian Leonard Pole*

BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

Environmental, Health & Safety Law

Suite 7, Village Office Park, 2 Inkonka road, Kloof

KwaZulu-Natal, South Africa

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Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

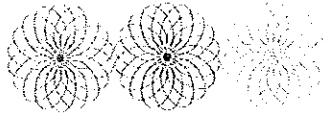
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| RESULT            | OK          |

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*AMC*

ADRIAN POLE



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Your Reference: NERSA 7/5 COO  
My Reference: AP/LP/ELA-JHB SAFCEI

**URGENT**

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[elizabeth.taylor@nersa.org.za](mailto:elizabeth.taylor@nersa.org.za); [charles.hlebela@nersa.org.za](mailto:charles.hlebela@nersa.org.za)

1 March 2016

THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

Re: **Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others**  
**Case No. 19529/15**

1. We refer to the above matter wherein NERSA is cited as the third respondent, and to our letter to NERSA dated 15 January 2016 requesting the relevant record relating to NERSA's concurrence on the Minister of Energy's 2013 nuclear s34 Determination (for ease of reference a copy of the letter is attached hereto).
2. To date we have received no response from NERSA.
3. Notwithstanding this, the first and second respondents (the Minister of Energy and the President of the Republic of South Africa) have provided us with a 'record' and 'supplementary record' relating to the 2013 nuclear s34 Determination, including

Attorney: Adrian Leonard Pole  
BA,LLB,MEEnvDev,LLM(environmental law)  
VAT Registration Number: 4030234308

records relating to NERSA's concurrence therein. In particular, we have been furnished with the following documents relating to NERSA:

- 3.1. A letter dated 11 November 2013 from the Minister of Energy to NERSA requesting that NERSA confirm its concurrence on the 2013 nuclear s34 Determination;
  - 3.2. A letter dated 6 January 2014 from NERSA to the Minister of Energy advising that NERSA had resolved at a meeting on 26 November 2013 to concur on the 2013 nuclear s34 Determination;
  - 3.3. A copy of NERSA's *Extracts of the Minutes of the Energy Regulator Meeting No. 96 of 26 November 2013* ('NERSA Minutes'); and
  - 3.4. A copy of the 2013 nuclear s34 Determination signed by NERSA.
4. We note that the NERSA Minutes make reference to the following further documents that were not included in the record and supplementary record provided:
- 4.1. Under item 5.2 of the NERSA Minutes, reference is made to NERSA's Mr. Bukula having tabled '*the report on the Concurrence with the Minister of Energy on the new generation capacity determination on the nuclear programme*' ('Report on Concurrence'). It is clear from the NERSA Minutes that the Report on Concurrence was considered at the meeting of members where NERSA made its decision to concur in the 2013 nuclear s34 Determination, and that the report served before NERSA when it made its decision. It follows that the Report on Concurrence forms an important part of the record of the 2013 nuclear s34 Determination;
  - 4.2. Under item 5.2 b. of the NERSA Minutes, reference is made to a letter dated 22 November 2013 from the Minister of Energy to NERSA. This letter forms part of the record of the 2013 nuclear s34 Determination; and
  - 4.3. Under item 5.2 d. of the NERSA Minutes, reference is made to the '*costs on the nuclear programme being double*', and it is noted that '*these issues have been raised with the Minister*'. No correspondence or other documentation was included in the record provided wherein this issue was raised by NERSA with the Minister (or any response from the Minister). Such documentation also forms part of the record of the 2013 nuclear s34 Determination.
5. We point out that NERSA's ongoing failure to provide our clients with any record, notwithstanding that as indicated above NERSA clearly has relevant documents in its possession, is in violation of:
- 5.1. Section 195 of the Constitution of the Republic of South Africa, 1996 ('the Constitution'), which stipulates that public administration must be governed by the democratic values and principles enshrined in the Constitution, including the

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principle that public administration must be accountable,<sup>1</sup> and that transparency must be fostered by providing the public with timely, accessible and accurate information;<sup>2</sup>

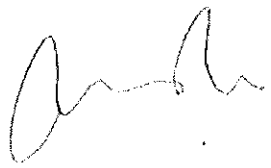
- 5.2. Sections 10(1)(e) and (f) of the National Energy Regulator Act, 2004, which read together provide that every decision of NERSA must be in writing and must be based on reasons, facts and evidence that must be summarised and recorded, and explained clearly as to its factual and legal basis and the reasons therefor; and
- 5.3. Section 10(2) of the National Energy Regulator Act, which stipulates that any decision of NERSA and the reasons therefor must be available to the public.

6. In light of the above, and recalling NERSA's failures to date to act accountably and openly as is its duty, we reiterate that our clients require NERSA to provide us, by **Monday 7 March 2016**, with the relevant record relating to:

- 6.1. NERSA's concurrence in the 2013 nuclear s34 Determination (including the Report on Concurrence, all correspondence (including e-mails), reports, memoranda, documents, evidence, transcripts of recorded proceedings, and other information that served before it); and
- 6.2. Any consultation by the Minister of Energy with NERSA regarding her decision to publish the 2013 nuclear s34 Determination in the *Gazette* on 21 December 2015.

7. Our clients reserve their rights.

Yours sincerely



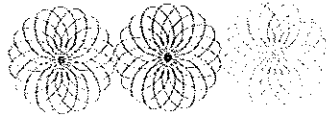
\_\_\_\_\_  
Adrian Leonard Pole

\_\_\_\_\_  
<sup>1</sup> Section 195(1)(f).  
<sup>2</sup> Section 195(1)(g).



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ADRIAN POLE



ENVIRONMENTAL LAW

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ATTACHMENT

Your Reference: NERSA 7/S COO  
My Reference: AP/LP/ELA-JHB SAFCEI

**URGENT**

THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA  
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15 January 2016

THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

Re: **Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others**  
**Case No. 19529/15**

1. We refer to our letter to NERSA dated 26 July 2015 wherein we advised that we represent Earthlife-Africa Johannesburg and the South African Faith Communities' Environmental Institute ('our clients'), to our clients' Notice of Motion and supporting papers served on your offices on 20 October 2015, and to the Determination under s34(1) of the Electricity Regulation Act, 2006 (ERA) published in the *Gazette* on 21 December 2015 (GN1268 GG 39541), signed on 11 November 2013 by the then Minister



5/7<sup>175</sup>

of Energy Dikobe Ben Martins, and on 17 December 2013 by Cecilia Khuzwayo (Chairperson: NERSA) ('nuclear s34 Determination').

2. In our 26 July 2015 letter, we advised NERSA that our clients were concerned that the Minister of Energy ('the Minister') was proceeding with the procurement of nuclear energy in a manner that was not constitutionally compliant with established procurement principles and without properly putting in place the prerequisites for such nuclear new generation capacity procurement, including in terms of s34 of the ERA. We informed NERSA that our clients had instructed us to consider launching an urgent legal challenge to the procurement process. In this respect, we asked for urgent responses to a number of questions, including:

- 2.1. Whether NERSA had been consulted and had given its concurrence in respect of any determination/s in terms of sections 34(1)(a) and (b) of the ERA that new generation capacity is needed, that electricity must be generated from nuclear energy sources, and determining the percentages of electricity that must be generated from such nuclear sources; and
- 2.2. Whether NERSA had been consulted and had given its concurrence in respect of any determination by the Minister that the purportedly required new nuclear generation capacity must be established through a tendering system which is fair, equitable, transparent, competitive and cost-effective, that is system-specifically created for the procurement of nuclear new generation capacity, in terms of section 34(1)(e), as read together with section 217 of the Constitution.

NERSA were also requested, if any such decisions had been made, to provide us with evidence (minutes, records, decision-memoranda, etc.) of the consultation and concurrence. We advised further in our letter that if no response was received by 7 August 2015, for the purposes of any court proceedings initiated it would be assumed that NERSA was not consulted and did not provide concurrence on any s34 Determinations by the Minister regarding nuclear energy and the procurement thereof.

3. While we received a letter dated 30 July 2015 from NERSA confirming that our letter would be brought to the attention of the Acting CEO Mr. Paseka Nku, no further reply was ever received.
4. Our clients subsequently launched their legal challenge in October 2015 under case number 19529/15, and NERSA was cited as the 3<sup>rd</sup> Respondent.
5. Our clients were aggrieved to learn in December 2015 that the 2013 nuclear s34 Determination had been deliberately withheld from the public (as stated in the Department of Energy's Media Statement titled ***Progress with the Nuclear New Build Programme*** dated 26 December 2015) until published by notice in the *Gazette* on 21 December 2015 and served on us by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as part of the Rule 53 Record on 23 December 2015.
6. As a consequence, our clients have only recently been in a position to consider and take advice on the nuclear s34 Determination. In our clients' view, the making of the nuclear s34 Determination in secret and without public participation, as well as the deliberate withholding of this Determination from the public for a period of two years, was unlawful and unconstitutional (violating *inter alia* the requirements of open, accountable and transparent government and reasonable, lawful, and procedurally fair administrative action). We are instructed to notify you, as we hereby do, that our clients intend exercising their rights in terms of Rule 53(4) to amend, add to and vary their Notice of Motion and to supplement their supporting affidavits in order to review the nuclear s34 Determination, which was taken with the concurrence of NERSA.
7. However, in advance of us doing so, we require NERSA to provide us, by 1 February 2016, with the relevant Record relating to its concurrence in the 2013 nuclear s34 Determination and the decision to withhold it from the public. Upon receipt of this Record or upon expiry of the time-frame mentioned above, we will amend, add to or vary the relevant portion of our clients' Notice of Motion and supplement their supporting affidavits as appropriate.
8. Our clients reserve their rights.

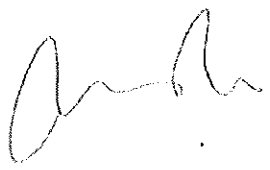
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*and*  
*ML*

Yours sincerely



---

Adrian Leonard Pole



**Adrian Pole**

---

**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 01 March 2016 03:43 PM  
**To:** 'info@nersa.org.za'; 'zethu.kapika@nersa.org.za'; 'elizabeth.taylor@nersa.org.za';  
'charles.hlebel@nersa.org.za'  
**Subject:** RE: Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4  
Others  
**Attachments:** ELA-JHB SAFCEI Letter to Nersa 1 March 2016 (Case No 19429-15).pdf

Dear NERSA

Please find attached our legal correspondence for the urgent attention of the National Energy Regulator of South Africa, including the Chairperson and CEO as appropriate.

Yours sincerely

( *Adrian Leonard Pole*  
..LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*  
Environmental, Health & Safety Law  
Suite 7, Village Office Park, 2 Inkonka road, Kloof  
KwaZulu-Natal, South Africa  
Mobile: 082 3408 534  
Tel: 031 764 2593  
Fax: 031 764 7934  
E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)  
Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

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\*\*\* TX REPORT \*\*\*  
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| RESULT            | OK          |

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**Adrian Pole**

---

**From:** Sandile Dlamini <Sandile.Dlamini@nersa.org.za>  
**Sent:** 07 March 2016 08:17 AM  
**To:** adrian@adrianpole.co.za  
**Cc:** Zethu Kapika; Charles Hlebela; Mbulelo Ncetezo; Mmboniseni Murathi; Elizabeth Taylor  
**Subject:** RE: Earthlife Africa - Johannesburg and Another / The Minister of Energy and 4 Others

Dear Adrian

We acknowledge receipt of your email below. We are attending to your request and should be able to revert to yourselves by Wednesday, 9 March 2016.

Yours sincerely  
**Sandile Dlamini | HOD Legal Services | NERSA |**

tel +27 12 401 4652 | Fax +27 12 401 4700 | [Sandile.dlamini@Nersa.org.za](mailto:Sandile.dlamini@Nersa.org.za)

**From:** Adrian Pole [<mailto:adrian@adrianpole.co.za>]  
**Sent:** Tuesday, March 1, 2016 3:43 PM  
**To:** info <[info@nersa.org.za](mailto:info@nersa.org.za)>; Zethu Kapika <[Zethu.Kapika@nersa.org.za](mailto:Zethu.Kapika@nersa.org.za)>; Elizabeth Taylor <[Elizabeth.Taylor@nersa.org.za](mailto:Elizabeth.Taylor@nersa.org.za)>; Charles Hlebela <[Charles.Hlebela@nersa.org.za](mailto:Charles.Hlebela@nersa.org.za)>  
**Subject:** RE: Earthlife Africa - Johannesburg and Another / The Minister of Energy and 4 Others

Dear NERSA

Please find attached our legal correspondence for the urgent attention of the National Energy Regulator of South Africa, including the Chairperson and CEO as appropriate.

Yours sincerely

*Adrian Leonard Pole*  
BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*  
Environmental, Health & Safety Law  
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Enquiries, Mmboniseni Murathi  
Tel. 012 401 4659  
Fax. 012 401 4700  
Email. Mmboniseni.murathi@nersa.org.za  
Ref. PAIA/ 001

Date. 07 March 2016

Mr Adrian Leonard Pole  
Adrian Pole Attorneys  
Suite 7, Village Office Park  
2 Inkonka Road  
3610

By Email: adrian@adrianpole.co.za

Dear Mr Pole

**RE: EARTHLIFE AFRICA- JHB AND ANOTHER / THE MINISTER OF ENERGY AND FOUR OTHERS**

We refer to your request for information and hereby advise that the National Energy Regulator (NERSA) has satisfied itself with the nature of the requested information and hereby responds as follows:

- a) Re Paras 4.1 and 6.1
  - i) NERSA's concurrence in the 2013 nuclear s34 Determination was provided to yourselves;
  - ii) The report tabled at the Energy Regulator meeting of 26 November 2013 is attached,
  - iii) A copy the extract from the minutes of the Energy Regulator Meeting held on 26 November 2013 was provided to yourselves. The said extract constitutes the official record of the proceedings.
- b) Re Para 4.2  
The letter dated 22 November 2013 from the Minister of Energy could not be found.

Regulator Members: Mr JRD Modise (Chairperson) Ms MND Nkomo (Deputy Chairperson)  
\*Mr T Bukula \*Dr RD Cronpton \*Ms N Maseli Ms KR Mhlumye Mr FK Sibanda  
\*Full-time Regulator Members

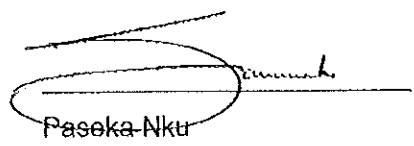
NERSA is a Regulatory Authority established in terms of the National Energy Regulator Act, 2004 (Act No 40 of 2004)



c) Re Para 62

We could find records of any consultation with the Minister regarding her decision to publish the 2013 nuclear s34 Determination.

Yours sincerely

A handwritten signature in black ink, appearing to read "Pasoka Nku", is written over a horizontal line. The signature is somewhat stylized and loops back to the left.

Pasoka Nku  
Acting Chief Executive Officer

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**REPORT OF THE CHAIRPERSON OF THE ELECTRICITY SUBCOMMITTEE  
- NEW GENERATION CAPACITY: DETERMINATION ON NUCLEAR  
PROGRAMME BY MINISTER OF ENERGY**

**SUBJECT**

A determination on nuclear programme by the Minister of Energy in terms of section 34(1) of the Electricity Regulation Act ('the Act') submitted to the Energy regulator for concurrence in November 2013.

**PURPOSE**

The purpose of this submission is to recommend to the Energy Regulator to concur with the proposed Determination from the Minister of Energy.

**SUMMARY**

In the letter dated 11 November 2013 the Minister of Energy requested the National Energy Regulator of South Africa's concurrence with the proposed determination. According to the Determination, 9600 MW should be procured from nuclear energy sources in accordance with the capacity allocated in Table 3 of the IRP 2010-2030. The Integrated Resources Plan (IRP) applicable for the planned procurement periods stated in the Determination is the Integrated Resources Plan for Electricity 2010-2030 ('IRP 2010-2030') published as GN 400 of 06 May 2011 in Government Gazette No. 34263.

It has to be noted that section 2 (2) of the New Generation Regulations ("the Regulations") indicates that the regulations do not apply to the procurement of nuclear capacity.

The Determination: Nuclear Programme addresses all the requirements of section 34 of the Act.

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The power producers selected pursuant to the provisions of the Determination are required to apply to NERSA for generation licences in accordance with section 7 of the Act. The applicants should, in accordance with section 14 of the Act, provide evidence of compliance with the applicable at the time Integrated Resources Plan (IRP). The analysis of the Determinations was done with reference to the IRP 2010-2030.

The summary of the analysis is as outlined below:

- (a) The capacity allocation in the Determination is consistent with the IRP 2010-2030.
- (b) According to the IRP 2010 - 2030 1600 MW (2 units of 800 MW each) should be procured annually from nuclear energy source starting from the year 2023, or in total 9600 MW of nuclear capacity should be commissioned by the year 2030.
- (c) However, the forecasts in the IRP 2010 - 2030 appear to be overstated when compared with the actual peak demand. For example, the peak demand in 2013 is about 36 000 MW as opposed to the peak demand of IRP2010 of 42 416 MW in 2013, which is more than 6000 MW below the IRP2010 forecast. Currently the IRP2010 is being revised with the main focus being the reduction of the demand forecast
- (d) the significant reduction in the revised demand forecast of CSIR will require deferment of the commissioning dates of the New build options of IRP 2010 by about at least 5 years given the coal and renewable energy programs currently under construction
- (e) The overnight capital cost for the nuclear power plant are estimated at R26575 in the IRP 2010 - 2030. The current estimates of overnight capital costs based the Areva/Mitsubishi nuclear plant construction in Turkey are about \$4600/kW (R45 830/kW).
- (f) The Levelised Cost of Electricity (LCOE) projected from overnight costs of R45 830/kW is R0.95/KWh (in 2013 ZAR).
- (g) The procurement programme for nuclear capacity may have no impact on the MYPD3 but will affect the MYPD4.

**RECOMMENDATIONS**

It is recommended that the Energy Regulator concurs with:

- (a) the Determination: Nuclear Programme 2013



*P. Baleni*

Mr. Thembani Bukula  
Chairperson

Ms. Phindile Baleni (née Nzimande)  
CEO

Date 2013/11/21

Date 21/11/2013



PL49



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Enquiries. Ms P Baleni (née Nzimande)  
Tel. (012) 401 4600  
Fax. (012) 401 4681

**Mr Dikobe Ben Martins, MP**  
Minister of Energy  
Department of Energy  
Private Bag x19  
Arcadia  
0007

**By Fax: (012) 444 4505**

Honourable Minister

**Section 34(1) of the Electricity Regulation Act 4 of 2006 Determination - Nuclear Procurement Programme**

Your letter dated 11 November 2013 has reference.

The Energy Regulator, at its meeting held on 26 November 2013, resolved to concur with the Minister of Energy as follows:

1. *that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in Government Gazette No. 34263) ("IRP 2010-2030" or as updated)[our insertion];*
2. *electricity produced from the new generation capacity("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective;*

Regulator Members: Ms C Khuzwayo (Chairperson) Mr MJ Lesejane (Deputy Chairperson) \*Ms P Baleni (née Nzimande) (Chief Executive Officer)  
\*Mr T Bukula \*Dr RD Crompton Mr O Komano Ms KR Mthimuniye Ms GN Whittington Banda  
\*Full-time Regulator Members

3. *the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;*
4. *the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;*
5. *the procurement agency in respect of the nuclear programme will be the Department of Energy;*
6. *the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, requests for proposals and/or all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;*
7. *the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and*
8. *the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.*

A certified copy of the NERSA decision on the Nuclear Procurement Programme is attached (see Appendix A).

Yours Sincerely,

**Mrs Cecilia Khuzwayo**

Chairperson: NERSA

Date :

Cc : Ms N Magubane  
Ms T Zungu

Director General  
Chief Operating Officer

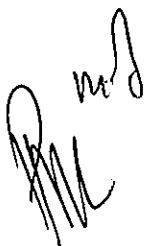
## NUCLEAR PROGRAMME

### DETERMINATION UNDER SECTION 34(1) OF THE ELECTRICITY REGULATION ACT 4 OF 2006

#### PART A

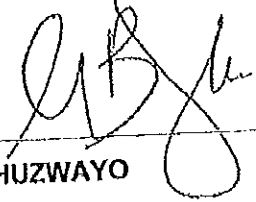
The Minister of Energy ("the Minister"), in consultation with the National Energy Regulator of South Africa ("NERSA"), acting under section 34(1) of the Electricity Regulation Act 4 of 2006 (as amended) (the "ERA") has determined as follows:

1. that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in *Government Gazette* No. 34263) ("IRP 2010-2030" or as updated) [our insertion];
2. electricity produced from the new generation capacity ("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective;
3. the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;
4. the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;
5. the procurement agency in respect of the nuclear programme will be the Department of Energy;
6. the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, requests for proposals and/or all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;
7. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and



- 8. the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.

Concurrence to this Determination given  
by the National Energy Regulator of South  
Africa on the below mentioned date:

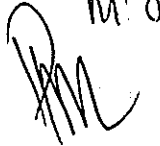
SIGNATURE: 

MS CECILIA KHUZWAYO  
CHAIRPERSON: NERSA  
DATE: 17/12/2013

Determination made by the Minister of  
Energy on the below mentioned date:

SIGNATURE: \_\_\_\_\_

DIKOBE BEN MARTINS, MP  
MINISTER: ENERGY  
DATE:

 m.s



EXTRACT OF THE MINUTES OF THE ENERGY REGULATOR MEETING NO. 96  
OF 26 NOVEMBER 2013 HELD AT KULAWULA HOUSE,  
526 MADIBA STREET, ARCADIA, PRETORIA

ITEM 1

1 Welcome

Mr Lesejane chaired the meeting in terms of clause 6.2 of the NERSA meeting rules and procedures. He declared the meeting open at 09:00 and welcomed all present.

1.1 Attendance Register

1.1.1 Members

|                        |   |
|------------------------|---|
| Mr J Lesejane          | Part-time Regulator Member - Deputy Chairperson |
| Mr T Bukula            | Full-time Regulator Member                      |
| Dr R Crompton          | Full-time Regulator Member                      |
| Ms K Mthimunye         | Part-time Regulator Member (Teleconference)     |
| Ms G Whittington Banda | Part-time Regulator Member (Teleconference)     |

1.1.2 Apologies

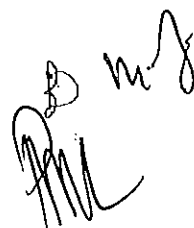
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| Mrs C Khuzwayo             | (Part-time Regulator Member – Chairperson) -<br>Private business |
| Ms P Baleni (née Nzimande) | (Full-time Regulator Member – CEO) – RERA<br>conference          |
| Mr O Komane                | Part-time Regulator Member - Private business                    |

1.1.3 Members of the public

|            |       |
|------------|-------|
| Mr V Gibbs | Eskom |
|------------|-------|

1.1.4 Management

|                 |  |
|-----------------|--|
| Ms K Brits      | Regulator Secretary                          |
| Mr B Chokoe     | Regulator Legal Counsel                      |
| Mr C Geldard    | Regulator Specialist: Electricity Regulation |
| Mr D Seemela    | HOD: Electricity Licensing and compliance    |
| Mr A Lees-Rolfe | EM: Petroleum Pipelines Regulation           |
| Mr Z Lombaard   | Acting Chief Financial Officer               |



|               |   |
|---------------|---|
| Ms N Maseti   | EM: Piped-Gas Regulation                                |
| Mr D Mashiane | Acting HOD: Legal Advisory Services                     |
| Mr P Nku      | Chief Human Capital Officer                             |
| Ms T Jamba    | HOD: IRM  |
| Mr M Nyoni    | Distribution Engineer                                   |
| Mr S Molepo   | Senior Engineer: Electricity Infrastructure Planning    |
| Ms E Makhuvha | Acting Senior Manager: Regulatory Analysis and Research |
| Mr K Pillay   | Adviser: Petroleum Pipelines Regulation                 |

#### 1.1.6 Recording Secretary

Ms F Ncube                      Senior Committee Secretary

#### 1.2 Official Notices/Personalia

Ms Brits informed the Energy Regulator that the Regulator Support Unit was in receipt of communication from the Department of Energy informing the Energy Regulator that the term of the part-time Regulator Members which was due to end on 31 December 2013 had been extended for three months to 31 March 2014.

#### ITEM 2

#### 2 Adoption of Agenda

The agenda was adopted subject to the withdrawal of agenda item 5.3 (approval of the reviewed methodology for determining the national free basic electricity (NFBE) rate for the compensation of Eskom by Local Authorities.

#### ITEM 3

#### 3 Declaration of Interests

According to the declaration of interest forms circulated to all present at the meeting there were no interests declared regarding the agenda items.

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ITEM 5**5 Report from the Chairperson of the Electricity Subcommittee (ELS)**

Mr Bukula tabled the report of the Electricity Subcommittee as indicated below.

**5.2 Concurrence with the Minister of Energy: new generation capacity determination on the nuclear programme**

Mr Bukula tabled the report on the Concurrence with the Minister of Energy on the new generation capacity determination on the nuclear programme.

In considering the report, various queries were raised by Members to which Mr Bukula responded as follows:

**a. Overstated Forecasts**

In October 2012, the Energy Regulator approved a determination from the Minister for renewable energy. Stated in the document was the fact that all the forecasts were overstated. The Energy Regulator approved despite having noted this because the relevant section requiring concurrence is section 34 which has specific regard to such matters as the new generation capacity, who the suppliers will be and the typos of energy sources etc.

**b. Outdated Integrated resource plan (IRP)**

The matter of the IRP being outdated stood true when the previous decision was taken (27 September 2012). NERSA amongst other things needs to be consistent as the Regulator.

The Minister has however since informed NERSA in a letter dated 22 November 2013 that an updated IRP has been published on the Department of Energy's website for comment. NERSA will be commenting on the updated IRP.

**c. Reasons for making the decision on the nuclear programme in 2013**

The lead time for the procurement of nuclear energy is at least 10 years. The analysis indicates that the nuclear power generation capacity allocations in the determination are in line with the IRP 2010 – 2030.

**d. Levelised costs of electricity**

With regard to the costs on the nuclear programme being double, the Energy Regulator noted the same issue in the previous determination on

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renewable energy. However, it should be noted that these issues have been raised with the Minister.

e. Mid merit gas fired power instead of nuclear power

The projected average growth over a 10 year period of the Country has been 3.5% and it is expected that this trend will continue. The argument for the use of mid merit gas fired power may hold true in two years but may not necessarily do so in 15 years time in which case the Country must be prepared for the procurement of nuclear power with due cognisance taken of the lead times required for its procurement.

**Resolution:**

Having duly considered the request for the concurrence with the Minister of Energy on the determination for new generation capacity on the nuclear programme, the Energy Regulator concurred (in terms of section 34(1)(a) of the Electricity Regulation Act 4 of 2006 ("ERA")) as stated in the Minister's letter as follows:


1. *that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy (nuclear programme), which is in accordance with the capacity allocated under the integrated resource plan for electricity 2010 – 2030 (published as GN 400 of 6 May 2011 in Government gazette No. 34263) ("IRP 2010-2030" or as updated)[our insertion];*
2. *electricity produced from the new generation capacity ("the electricity") shall be procured through tendering processes which are fair, equitable, transparent, competitive and cost-effective;*
3. *the nuclear programme shall target connection to the Grid as outlined in the IRP2010 -2030 (or as updated), taking into account all relevant factors including the time required for procurement;*
4. *the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;*
5. *the procurement agency in respect of the nuclear programme will be the Department of Energy;*
6. *the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, requests for proposals and/or*

*all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial close which are within its control;*

*7. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and*

*8. the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.*

**Commissioner of Oaths**

  
RAMPHO DAVID MASHIANE  
Attorney of the High Court of South Africa  
National Energy Regulator of South Africa  
Kulawula House, 526 Vermeulen Street  
Arcadia Pretoria

Certified a true copy  
of the Original

*20 December 2013*

*RM*

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PLSO



energy  
Department:  
Energy  
REPUBLIC OF SOUTH AFRICA

## MEDIA STATEMENT

### Progress with the Nuclear New Build Programme

There have been a number of reports alleging that the Government and the Cabinet, in particular, have finalised a decision to implement the nuclear programme.

The decision to proceed with developing the Nuclear New Build Programme was taken in principle by Cabinet in June 2015, namely that South Africa should proceed with developing a programme for the procurement of the 9.6GW of nuclear power plants to realise its self-sufficiency policy objective with due consideration to the financial implications;

However this was subject to more work being done on:

- the proposed funding model;
- the risks and mitigation strategies; and
- the contributions by countries as contained in the Inter-Governmental Agreements.

The Cabinet meeting on Wednesday, 9 December 2015, received a report back from the Energy Security Cabinet Sub-Committee which had considered the work being done by both the Department of Energy and the National Treasury in respect of the funding and financing of the programme.

As a result at this meeting Cabinet approved that:

- the Department of Energy should issue the Request for Proposal (RFP) for the Nuclear New Build Programme of 9600MW of nuclear power, and,
- the final funding model will be informed by the response of the market to the RFP and be submitted to Cabinet thereafter for final approval and implementation.

The decision to proceed with issuing the Request for Proposal will further assist in developing a funding model. Proposals in this regard will first be submitted to Energy Security Cabinet Sub-Committee for recommendation before being considered by Cabinet.

Any decision to proceed further with a Nuclear New Build Programme will therefore only take place after the RFP process has been completed and a final funding model has been developed, and then referred back to Cabinet for consideration and approval.

The Department of Energy is committed to cost effectiveness and full transparency. We will ensure that the integrity of the process is safeguarded at all times and is done within the existing fiscal policy framework of our Government.

It should be further noted that the current process is guided by the Integrated Resource Plan for Electricity 2010-2030 which was first gazetted in May 2011. (Gazette No 34263).

*DMS*  
*ML*

This plan included proposals around the appropriate mix for electricity generation including, primarily, coal, nuclear and renewable sources of energy. In order to proceed with the Request for Proposals as agreed by Cabinet on 9 December 2015 it was necessary to ensure that the National Electricity Regulator of South Africa (NERSA) has been consulted on the appropriate energy mix and particularly the intention to procure additional nuclear capacity. This was done in 2013 and agreed by NERSA and the Minister at the time, Minister Ben Martins, MP, and a determination to this effect in terms of the Electricity Regulation Act of 2006 was signed. However the actual gazetting of this determination was withheld until such stage that government had agreed to proceed with the Request for Proposals. Once this agreement was reached, on 9 December 2015, the present Minister of Energy, Ms Tina Joemat-Pettersson, consented that the determination signed in 2013 could be released, particularly as nothing had changed in the Integrated Resource Plan for Energy in the intervening period.

The Department accepts that this should have been made clear when the determination was gazetted on 21 December 2015.

Issued by: The Director General of the Department of Energy, Mr Thabane Zulu.

Contact: 082 801 9708. thabane.zulu@energy.gov.za

Date: 26 December 2015



Print this page

# MPs grill Nersa on above-inflation tariff hike

Mar 9, 2016 | Wyndham Hartley

MPs say above-inflation tariff increase it granted to electricity utility Eskom last week would hurt poor South Africans

MPS TOOK the National Energy Regulator of SA (Nersa) to task on Tuesday, saying the above-inflation tariff increase it granted to electricity utility Eskom last week would hurt poor South Africans.

Nersa was also questioned about Eskom's extensive use of an open-cycle turbine to bolster the national electricity grid in a bid to avoid load shedding. This resulted in Eskom spending billions of rand on diesel to run the turbine. MPs also queried the preferential pricing offered to mining giant, BHP Billiton.

Nersa granted Eskom a 9.4% tariff hike for 2016-17, and not the 16% increase it had requested.

( Katha Freedom Party MP Jan Esterhuizen asked the Nersa delegation in Parliament's energy committee why cash-strapped electricity consumers had to pay the price of Eskom inefficiency. He said that "9.4% cannot be afforded in the current climate of low growth and increasing inflation".

Mr Esterhuizen accused the regulator of ignoring the outcry expressed at public hearings and also questioned why BHP Billiton was paying five times less than the average cost of electricity.

Democratic Alliance MP Pieter van Dalen asked if Nersa had found Eskom to have been "prudent" in incurring cost overruns, and whether the situation would improve once Medupi and Kusile were completed.

He also wanted to know whether Eskom was collecting fines from mines that supplied poor quality coal to its power stations.

( Nersa electricity official Thembani Bukula told the committee that had Medupi been commissioned timeously some three years ago, then the diesel-guzzling open cycle turbine would not have been used as much. He said the 9.4% determination for Eskom had been made on the basis of affordability and sustainability. He also said the contracts with BHP Billiton had been negotiated at a time when there was an oversupply of electricity, before 1994. Nersa could not revoke contracts, he said.

While Koeberg nuclear power station did produce the cheapest power in the country, Nersa had not undertaken any modelling of what a nuclear-build programme would do to the cost structure of electricity, Mr Bukula said.

~ o o o ~

*Handwritten signature*  
1/1



PLS2

Print this page

# Proposals to test appetite for nuclear

10 Mar 2016 | Linda Ensor

Latest in nuclear plan comes as Moody's includes South Africa's expensive schemes — such as nuclear energy — in key ratings assessment

ENERGY Minister Tina Joemat-Pettersson had instructed officials to finalise and issue a request for proposals for the government's 9,600MW nuclear build programme by the end of this month, the department's director-general Thabane Zulu said in Parliament on Wednesday.

The intention of the request was to test the market and gather information, so the department can formulate a funding plan, he said.

Mr Zulu's disclosure that implementation of the government's nuclear plan is gathering pace came as rating agency Moody's noted that its planned review of SA's fiscal and economic prospects would include an assessment of "the implications of expensive schemes, such as nuclear energy and the National Health Insurance, for the government's finances in an environment of rising interest rates".

The Treasury has allocated R200m for preparatory work on the nuclear energy project which Finance Minister Pravin Gordhan has emphasised could take several years to finalise. He has also stressed that its go-ahead will depend on affordability.

Mr Zulu told members of Parliament's public enterprises committee that his department had concluded negotiations with the Treasury on key aspects of the nuclear procurement strategy. Publication of the request for proposals would take place once discussions on this strategy between the department, the Treasury and the office of the independent power producers were finalised.

Strategic talks would also have to be held with Eskom which had been designated as the operator for future nuclear plants.

Mr Zulu said his department had put together a tight technical team to prepare the request for proposal.

"We want to make sure that the process plan is thorough, effective and properly implemented," he said after the committee meeting was briefed by Eskom CEO Brian Molefe and other Eskom executives.

He explained that the request for proposals was based on the Cabinet's decision to go ahead with the nuclear build programme and was aimed at testing the market in terms of SA's state of readiness for the project and the best funding model to use.

Suppliers would submit technology and funding proposals. The request would give guidance on the best, cost-effective method. The government could then, on this basis, determine a funding model.

There was a difference between a request for proposals and tenders, though tenders might not be necessary if any of the proposals met the government's requirements, Mr Zulu said.

~ o o o ~



PL53

IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWN

WESTERN CAPE HIGH COURT  
2015 -12- 14  
CAPE TOWN/KAAPSTAD  
KAP HOE HOE

Case No: 19529/15

In the matter between:

EARTHLIFE AFRICA – JOHANNESBURG  
SOUTHERN AFRICAN FAITH COMMUNITIES'  
ENVIRONMENT INSTITUTE

First Applicant  
Second Applicant

and

THE MINISTER OF ENERGY  
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA  
THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA  
SPEAKER OF THE NATIONAL ASSEMBLY  
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES

First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent  
Fifth Respondent

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NOTICE IN TERMS OF UNIFORM RULE 30A(1)

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TAKE NOTICE THAT the First and Second Respondents have failed to comply with the provisions of Rule 53(1)(b).

TAKE NOTICE FURTHER THAT the First and Second Respondents have, in breach of their duties under Rule 53(1)(b), not furnished the Registrar with the following records and notified the Applicants' attorneys that they have done so:

1. The record of the First Respondent's (Minister's) decision on or about 21 September 2014 to sign the Agreement between the Government of the Republic of South Africa and the Government of the Russian Federation on Strategic Partnership and Cooperation in the fields of Nuclear Power and Industry (the Russian IGA);
2. The record of the Second Respondent's (President's) decision on or about 20 September 2014 to authorise the Minister's signature of the Russian IGA;
3. The record of the Minister's decision on or about 10 June 2015 to table the Russian IGA before Parliament in terms of section 231(3) of the Constitution;
4. The record of the Minister's decision on or about 10 June 2015 to table the Agreement for Cooperation between the Government of the Republic of South Africa and the United States of America concerning Peaceful Uses of Nuclear Energy before Parliament in terms of section 231(3) of the Constitution;
5. The record of the Minister's decision on or about 10 June 2015 to table the Agreement between the Government of the Republic of Korea and the Government of the Republic of South Africa regarding Cooperation in the Peaceful Uses of Nuclear Energy before Parliament in terms of section 231(3) of the Constitution;
6. The record(s) of the Minister's and/or Government's decisions to facilitate, organise, commence and/or proceed with the procurement of nuclear new generation capacity (including, at least, the decision by the Minister's and/or Government on or about May 2015 to appointment a bid specification committee or persons tasked with drawing up the bid invitation, and all related decisions subsequent thereto) and/or



any decisions by the Minister to exercise any powers under section 34(2) of the Electricity Regulation Act 4 of 2006 (ERA) in relation to the procurement of nuclear new generation capacity, prior to the taking of the decisions in consultation with the Third Respondent that:

- 6.1 new generation capacity is required and that the electricity must be generated from nuclear power and the percentage thereof, in terms of sections 34(1)(a) and (b) of the ERA: and
- 6.2 in terms of section 34(1)(e), read with section 217 of the Constitution, the procurement of such nuclear new generation capacity, must take place in terms of a procurement system that is fair, equitable, transparent, competitive and cost-effective.

**TAKE NOTICE FURTHER THAT** unless the First and Second Respondents remedy their aforesaid non-compliance with the provisions of Rule 53(1)(b), the Applicants intend, after the lapse of ten (10) days from the date of service of this notice, to apply to the above Honourable Court for an order, *inter alia*, compelling the First and Second Respondents to comply with the provisions of Rule 53(1)(b).

DATED at *Cape Town* on this the *11* day of **DECEMBER 2015**.

*DP Adrian Pole*  
ADRIAN POLE ATTORNEY

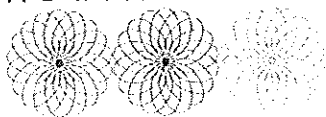
Applicants' attorney

*AMS*

205

PLS4

ADRIAN POLE



ENVIRONMENTAL LAW

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Email: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za) Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

Your Reference: 8028/2015/Z46  
(previously 3081/15/P19)  
My Reference: AP/LP/ELA-JHB SAFCEI

**URGENT**

**"WITH PREJUDICE"**

State Attorney Pretoria  
SALU Building  
316 Thabo Sehume Street  
PRETORIA  
0001

Attention: Mr Eben Snyman  
E-mail: [EbSnyman@justice.gov.za](mailto:EbSnyman@justice.gov.za)

5 February 2016


Dear Mr Snyman

Re: Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others

1. We refer to the above matter, to our letter to you dated 15 January 2016, to our telephone conversations on 21 January and 4 February 2016, and to our email to you also dated 4 February 2016.
2. In our clients' Notice of Motion (served on the First and Second Respondents on 12 October 2015), we gave notice of our intention to request a preferent date from the Judge President for the hearing of this matter, and called upon the First and Second Respondents, within 10 days of receipt of the Notice of Motion, to dispatch to the Registrar the records of their respective decisions that

were sought to be reviewed (including all correspondence (including e-mails), reports, memoranda, documents, evidence, transcripts of recorded proceedings, and other information serving before them), together with such reasons as the First and Second Respondent are by law required or may desire to give or make, and to notify us that it had done so.

3. On 29 October 2015, we received a letter from the State Attorney, Cape Town requesting on behalf of the Second Respondent a **four week extension** in which to file the record of proceedings.
4. On 30 October 2015, we wrote by email to the State Attorney, Cape Town noting that the abovementioned letter was written on behalf of the Second Respondent, and that a Notice to Oppose on behalf of the First Respondent was served on the Applicants' Cape Town corresponding attorneys on 28 October 2015. We requested clarification on whether a Notice to Oppose would also be served in respect of the Second Respondent, and whether the extension request was intended for the Second Respondent only.
5. The State Attorney, Cape Town replied on the same date advising that the extension request was intended for both the First and Second Respondents, and that the State Attorney, Cape Town was also instructed by the Second Respondent.
6. On 4 November 2015 we wrote by email to the State Attorney, Cape Town attaching a letter dated 3 November 2015. It was pointed out in the letter that, as was evident from the Applicants' Notice of Motion and Founding Affidavit, our clients were seeking to have this matter heard on a semi-urgent basis. We explained in our letter that our clients were open to discussing the request for an extension of time for the filing of the record of proceedings, and it was proposed that this be done by reaching agreement on truncated time-frames for the filing of the record and subsequent papers, as well as in respect of the matter being heard on a preferent date to be allocated by the Judge President. Time-frames for the filing of the record and subsequent papers were proposed. With regard to the record, it was proposed that the First and Second Respondents provide their record(s) of decision on or before **20 November 2015** (being more than **five weeks** from the date when the application was served on the First and Second Respondents). The State Attorney, Cape Town was requested to revert by close of business on 6 November 2015, with the intention being that any such agreement would be made an Order of Court at a meeting to be arranged with the Judge President.
7. On 5 November 2015, the First Respondent's Notice to Oppose was served on us.
8. On 6 November 2015, the State Attorney, Cape Town wrote to us by email acknowledging receipt of the 3 November 2015 letter, and advising that you (the Senior State Attorney, Pretoria) would now be acting as instructing attorney and the State Attorney, Cape Town as the correspondent. We were requested to direct all correspondence to you.
9. On 6 November 2015, following a telephonic discussion with you, we forwarded by email a copy of



the 3 November 2015 letter previously emailed to the State Attorney, Cape Town.

10. On 13 November 2015, we wrote to you by email referring to the proposed time frames (including in respect of the filing of the record), and requested an urgent response.
11. On 19 November 2015, we wrote to you attaching a letter of the same date. This letter referred to previous correspondence, advised that no response had been received to the proposed time-frames for the filing of the record and subsequent papers, and that the time-frame proposed for the filing of the record expired the following day (20 November 2015). It was highlighted that the fifteen day time period contained in Rule 53(1)(a) had expired on 2 November 2015. We requested that you reply urgently to the proposed time-frames, and requested further that, if you were not yet in a position to file the record (or to respond to the proposal), you advise us of the reasons and indicate when you would be in a position to do so.
12. On 25 November 2015, we wrote to you attaching a letter of the same date. This letter also referred to previous correspondence, advised that no response had been received to the proposed time-frames for the filing of the record and subsequent papers, and that the time-frame proposed by our clients for the filing of the record had expired on 20 November 2015. We advised you that our clients would have no choice but to instruct us to bring the necessary application to compel production of the record should the record not be filed by 27 November 2015, alternatively should an agreement in relation to an acceptable time-table for the filing of the record and subsequent papers not be reached by the same date.
13. On 11 December 2015 at 11h30, we delivered a notice in terms of Uniform Rule 30A, notifying the First and Second Respondents that the our clients intended, after the lapse of 10 days, to apply for an order that the First and Second Respondents comply with Rule 53(1)(b).
14. Also on 11 December 2015 and at 13h47, we received an email from you with an attached letter dated 10 December 2015. You apologised for only reverting at that stage to the our clients' previous correspondence, and advised that you had been unable to do so at an earlier stage. You advised further that:
  - you were in the process of compiling a record of the decisions to be reviewed;
  - this process was taking longer than initially envisaged;
  - the documentation required to be included in the record needed to be obtained from various Government Departments;
  - the records were of a 'fairly sensitive nature';
  - some difficulty had been experienced in obtaining the correct documentation to include in the record; and
  - some progress had been made.

You requested an indulgence to file a record on or before 29 January 2016.



15. On 15 December 2015, we received an email from you with a letter attached of the same date, requesting an agreement to the late filing of the record on or before **15 January 2016**.
16. On 17 December 2015, we wrote to you advising that our clients were prepared to agree to the late filing of the record on or before 15 January 2016, failing which the application to compel would be launched without further notice.
17. On 23 December 2015, the First and Second Respondents' correspondent attorneys belatedly served a notice on our Cape Town correspondent attorneys filing a 'record'.
18. On 13 January 2016, we received an email from you with a letter attached dated 12 January 2016. You advised that our letter dated 17 December 2015 had only come to your attention on 11 January 2016, but that the First and Second Respondents' correspondent attorneys had served a record on our Cape Town correspondent attorneys.
19. On 15 January 2016, and with no further records having been received, we wrote to you (in summary):
  - Noting that the record belatedly filed consisted of a Determination under s34(1) of the Electricity Regulation Act, 2006 (ERA), signed on 11 November 2013 by the then Minister of Energy Dikobe Ben Martins, and on 17 December 2013 by Cecilia Khuzwayo (Chairperson: NERSA) ('nuclear s34 Determination'), as well other documents that already formed part of our clients' Founding Affidavit (namely the international governmental agreements (IGAs) on nuclear procurement tabled under s231(3) of the Constitution, the 11 June 2015 letter from the First Respondent to the Parliamentary Clerk of Papers giving the Parliamentary Liaison Officer permission to submit these IGAs in accordance with s231(3) of the Constitution of the Republic of South Africa, 1996 for tabling in Parliament, and the Second Respondent's Minute No. 314 relating to the French IGA);
  - Recording that this record was incomplete, and that your clients had failed to comply with our clients' Rule 30A(1) Notice;
  - Recording that our clients were aggrieved that the 2013 nuclear s34 Determination was deliberately withheld from the public (as stated in the DOE's Media Statement titled ***Progress with the Nuclear New Build Programme*** dated 26 December 2015) until published by notice in the *Gazette* on 21 December 2015 and served on us as part of the Rule 53 Record on 23 December 2015;
  - Recording that clients were also aggrieved that the First Respondent had failed to respond to our letters sent prior to commencing this litigation querying the existence of any nuclear s34 Determination, stating that this was further evidence of the gross lack of transparency that has characterised the First Respondent and the government's conduct relating to the procurement of new nuclear capacity, and that our clients fully intended seeking a punitive costs order



against the First Respondent (whose conduct directly resulted in wasted effort and unnecessary litigation in relation to those portions of the relief and founding affidavit which were predicated on the understanding that no nuclear section 34(1) determinations had been made);

- Pointing out that that, in our clients' view, the making of the nuclear s34 Determination in secret and without public participation, as well as the deliberate withholding of this Determination from the public for a period of two years, was unlawful and unconstitutional (violating *inter alia* the requirements of open, accountable and transparent government and reasonable, lawful, and procedurally fair administrative action);
- Notifying you that our clients intended exercising their rights in terms of Rule 53(4) to amend, add to and vary their Notice of Motion and to supplement their supporting affidavits in order to review the nuclear s34 Determination;
- Advising you that in advance of us doing so, we required the First Respondent to provide us with the relevant record relating to the nuclear s34 Determination, and the decision to withhold it from the public and to only gazette it on 21 December 2015 ('the s34 Determination Record'). This included relevant portions of the record relating to decisions made at Cabinet Meetings held in June 2015 (at which the decision was made to proceed with developing the nuclear build programme) and 9 December 2015 (at which the decision was made to proceed with the RFP and publish the nuclear s34 Determination, and at which the Energy Security Sub-Committee provided a report-back on work done by the DOE and National Treasury in respect of funding and financing the nuclear programme);
- Calling upon your clients (having regard to the urgency of this matter as set out in previous correspondence, as compounded by the Department of Energy's 26 December 2015 Media Statement indicating that a Cabinet Decision had been made on 9 December 2015 that the Department of Energy ('DOE') should issue a Request for Proposals ('RFP') for the nuclear build programme of 9600MW of nuclear power) to dispatch all of the relevant record(s) to the Registrar (that is, the records as more fully described in our clients' Rule 30A(1) Notice, and the full nuclear s34 Determination record), together with the reasons for these decisions, and to notify us that they had done so, by no later than 1 February 2016;
- Recording that unless and until any further part of the record(s) is provided, our clients must assume that the First and Second Respondents are refusing to act transparently in providing the Court, our clients, and the public, access thereto. We stated that it seems impossible to imagine that such material and potentially adverse decisions could have been taken without further documents forming part of the decision-making. Aside from reserving our clients' rights to seek to compel the production of documents withheld, we also placed on record the



obvious: that should the 1<sup>st</sup> and 2<sup>nd</sup> Respondent fail to provide any documents that do form part of the record(s), they would not be entitled belatedly to produce and rely on such documents in any answering affidavit which they may file in due course;

- Requesting a copy of the RFP so that our clients could consider the proposed procedural timeframe and steps going forward; and
- Requesting an undertaking from your clients that no further steps would be taken to continue with the process of procurement of 9,600MW of nuclear power until this litigation has been adjudicated upon.

20. On 21 January 2016, we telephoned you querying whether we could expect to receive a further record from you clients. You indicated that you were meeting with your team of counsel and client representatives the following week, and would come back to us by the end of that following week.

21. Having received no further correspondence from you and no 'further record' from your clients, on 4 February 2016 we again telephoned you querying whether your clients intended filing a further record, and if so by when. You confirmed that you had met with your team of counsel, and that you would send us a letter that you had dictated (following perusal by your counsel) indicating what further records your clients will be providing, and by when. This telephone conversation was confirmed by our email to you of the same date.

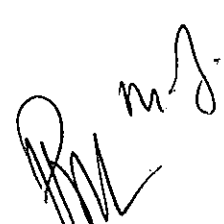
22. We reiterate that in a case of this importance and urgency, where your clients' conduct has been criticised publicly and in our papers as failing the standards of transparency, and where we have now been told that your clients and the government is proceeding apace with the nuclear procurement, this lackadaisical foot-dragging by the State is not only inconsistent with its duties under the Constitution, but is also reflective of the opacity that has characterised the nuclear procurement process thus far. It also violates our clients rights to supplement their papers (or compel production of outstanding documents).

23. If we do not receive the 'further record' by 9h00 on 8 February 2016 at the latest, together with a full and proper accounting of why any other records are being excluded or withheld, we will :

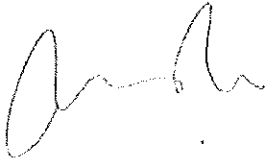
- (a) Proceed on the basis that there are no further documents on which your clients are able to justify the impugned decisions;
- (b) Begin preparing our supplementary founding affidavit; and
- (c) Seek to resist any attempt by your clients to belatedly thereafter attempt to rely on any documents that have not already been disclosed as part of the rule 53 record.

24. We record that this letter is written with prejudice, and will be added to the court papers as part of our supplementary founding affidavit.

25. Our clients reserve their rights.



Yours sincerely



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Adrian Leonard Pole



**Adrian Pole**

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**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 05 February 2016 01:36 PM  
**To:** EbSnyman@justice.gov.za  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** RE: Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others (Your ref. 8028/2015/Z46)  
**Attachments:** Letter to Snr State Attorney 5 February 2016 - Earthlife Africa JHB v Minister of Energy Others (Case No 19529-15).pdf

Dear Mr Snyman

Please find attached our letter dated 5 February 2016 for your urgent attention.

Regards

*Adrian Leonard Pole*  
 B.A., LL.M. (Environmental Law)

*Adrian Pole Attorneys*  
 Environmental, Health & Safety Law  
 Suite 7, Village Office Park, 2 Inkonka road, Kloof  
 KwaZulu-Natal, South Africa  
 Mobile: 082 3408 534  
 Tel: 031 764 2593  
 Fax: 031 764 7934  
 E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)  
 Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

(

PL 54.1<sup>213</sup>  
1

**The State Attorney**  
**Die Staatsprokureur**  
**iGqweta likaRhulumente**

4<sup>th</sup> FLOOR  
22 Long Street  
CAPE TOWN  
8001

Postal address  
Private Bag X 91  
CAPE TOWN  
8000

Tel: [021] 441-9200/06/9230  
Fax: [021] 421-9364  
[bcook@justice.gov.za](mailto:bcook@justice.gov.za)

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**Our Ref:** 3081/15/P19

**Your Ref:**

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Thursday, 29 October 2015

**Adrian Pole Attorney**

Suite 7 Village Office Park  
2 Inkonka Road  
KLOOF  
KWA-ZULU NATAL

Attention: Adrian Pole  
Email: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)

Dear Sir

**RE: EARTHLIFE AFRICA – JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS**

I write to you on behalf of the Second Respondent, The President of the Republic of South Africa.

Please be advised that I am instructed to request a four (4) week extension in which to file the record of proceedings.

Please urgently advise whether your clients are amenable to granting the extension.

**STATE ATTORNEY**

  
Per: Ms Arnelle Marsh-Scott  
/bc



2015

**Adrian Pole**

---

**From:** Cook Blanche <BCook@justice.gov.za>  
**Sent:** 29 October 2015 12:06 PM  
**To:** adrian@adrianpole.co.za  
**Cc:** Marsh-Scott Arnelle  
**Subject:** FW: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS  
**Attachments:** SKMBT\_C36015102912010.pdf  
  
**Importance:** High



the dojecd

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

THE OFFICE OF THE STATE ATTORNEY  
CAPE TOWN

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Dear Mr Pole

Enclosed herewith please find our letter dated 29 October 2015 for your attention.

Regards,

*Ms Blanche Cook*

Legal Secretary to  
Ms A Marsh-Scott, Mr Z Karjiker & Ms T Lombard  
State Attorney, Cape Town

☎ General: [021] 441 9200

☎ Direct Line: [021] 441 9210

☎ Fax: [021] 421 9364 or 086 644 6157

☎ [bcook@justice.gov.za](mailto:bcook@justice.gov.za)

☎ Liberty Centre, 22 Long Street, 5<sup>th</sup> Floor, Cape Town, 8000

**From:** [minolta@justice.gov.za](mailto:minolta@justice.gov.za) [mailto:[minolta@justice.gov.za](mailto:minolta@justice.gov.za)]

**Sent:** 29 October 2015 12:02 PM

**To:** Cook Blanche

**Subject:** Colour Scanner 5thF1r 10.184.143.192

215

PL54.2

**Adrian Pole**

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**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 30 October 2015 10:58 AM  
**To:** 'Marsh-Scott Arnelle'  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

Dear Mz March-Scott

We refer to your letter dated 29 October 2015.

It is noted that your letter to us is written on behalf of the 2<sup>nd</sup> Respondent, the President of the Republic of South Africa.

It is also noted that a Notice to Oppose was served on our Cape Town Correspondents on 28 October 2015. This Notice is in respect of the 1<sup>st</sup> Respondent, the Minister of Energy, and also indicates yourself as the Attorney for the 1<sup>st</sup> Respondent.

We would be grateful if you could clarify whether or not a Notice to Oppose is being or will be served in respect of the 1<sup>st</sup> Respondent?

We would also be grateful if you could confirm that the extension request was intended in respect of the 2<sup>nd</sup> Respondent only?

Regards

*Adrian Leonard Pole*

BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

Environmental, Health & Safety Law

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E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)

Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

**From:** Adrian Pole [<mailto:adrian@adrianpole.co.za>]

**Sent:** 29 October 2015 05:27 PM

**To:** 'Cook Blanche'

**Cc:** 'Marsh-Scott Arnelle'

**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

Dear Ms Cook

Thank you for your email and the attached letter.

We are seeking instructions from our clients and will revert soon.



PLS4.3

**Adrian Pole**

---

**From:** Marsh-Scott Arnelle <AMarshScott@justice.gov.za>  
**Sent:** 30 October 2015 11:23 AM  
**To:** Adrian Pole  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

Dear Mr Pole

“without prejudice”

The extension request is intended for both the First and Second Respondents as consultations would have to be scheduled with both my clients to finalise the record of proceedings.

The Second Respondent has also instructed our offices to file a Notice to Oppose and I have instructed our messengers to ensure that the notice is filed and served.

Regards  
Arnelle

---

**From:** Adrian Pole [<mailto:adrian@adrianpole.co.za>]  
**Sent:** 30 October 2015 11:12 AM  
**To:** Marsh-Scott Arnelle  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

Dear Mz Marsh-Scott

My apologies, my email below incorrectly asked for clarity on whether or not a Notice to Oppose is being or will be served in respect of the 1<sup>st</sup> Respondent rather than the 2<sup>nd</sup> Respondent, as was intended. We have of course received a Notice to Oppose in respect of the 1<sup>st</sup> Respondent.

Regards

*Adrian Leonard Pole*  
B.A., LL.B., M.EnvDev., LL.M.(environmental law)

*Adrian Pole Attorneys*  
Environmental, Health & Safety Law  
Suite 7, Village Office Park, 2 Inkonka road, Kloof  
KwaZulu-Natal, South Africa  
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Fax: 031 764 7934  
E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)  
Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

---

**From:** Adrian Pole [<mailto:adrian@adrianpole.co.za>]  
**Sent:** 30 October 2015 10:58 AM  
**To:** 'Marsh-Scott Arnelle'  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

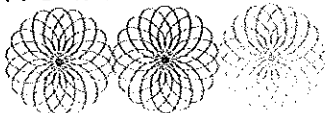
Dear Mz March-Scott





PL54.4

ADRIAN POLE



ENVIRONMENTAL LAW

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Email: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za) Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

Your Reference: 3081/15/P19  
My Reference: AP/LP/ELA-JHB SAFCEI

The State Attorney  
4<sup>th</sup> Floor  
22 Long Street  
CAPE TOWN  
8001

WITHOUT PREJUDICE

Attention: Ms Arnelle Marsh-Scott  
E-mail: [AMarshScott@justice.gov.za](mailto:AMarshScott@justice.gov.za)

3 November 2015

Dear Ms Marsh-Scott

Re: Earthlife Africa – Johannesburg / The Minister of Energy and Others

We refer to your letter dated 29 October 2015, and to subsequent email correspondence confirming that you are instructed by both the First and Second Respondents, and that the request for a four week extension of time in which to file the record of proceedings was intended for both your clients.

As you will have noted from our clients' Notice of Motion and Founding Affidavit (see in particular paragraphs 228 to 235), we are seeking to have this matter heard on a semi-urgent basis.

Our clients are open to discussing the request for an extension of time for the filing of the record of proceedings, but believe that should be done by reaching an agreement on truncated time-frames for the filing of the record and subsequent papers, as well as in respect of the matter being heard on a preferent date as allocated by the Judge President. To that end, we propose to approach the Judge President through our counsel to propose the following timetable:

- 1. The First and Second Respondents to provide their record(s) of decision on or before **20 November 2015** (that is more than 5 weeks after the application was served on the First and Second Respondents on 13 October 2015).
- 2. The Applicants are to deliver their supplementary affidavit and/or amended notice of motion on or before **4 December 2015**.
- 3. The Respondents are to deliver their answering affidavit(s) on or before **29 December 2015**.
- 4. The Applicants are to deliver their replying affidavit on or before **12 January 2016**.
- 5. The matter is to be heard on the earliest available date in the 1<sup>st</sup> term of 2016 that will allow the parties sufficient time to deliver their heads of argument and the allocated judge to consider the papers and heads of argument.

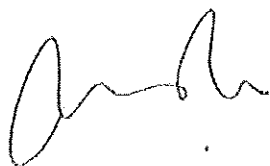
Please let us know by close of business on 6 November 2015 whether you agree to that timetable. The intention would be to have any such agreement made an Order of Court at a meeting to be arranged with the Judge President as soon as possible in the following week.

We would also be grateful if you could advise whether you have appointed Counsel yet. Our Counsel are Max du Plessis and Andreas Coutsooudis, and it may be preferable if your Counsel makes contact with them directly on 0845127406.

We look forward to hearing from you.



Yours sincerely



---

Adrian Leonard Pole



ms

**Adrian Pole**

---

**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 04 November 2015 07:15 AM  
**To:** 'Marsh-Scott Arnelle'  
**Cc:** Cook Blanche (BCook@justice.gov.za)  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS  
**Attachments:** 3 November 2015 Letter to State Attorney - Earthlife Africa JHB v Minister of Energy & Others (Case No 19529-15).pdf

Dear Marsh-Scott

Please find attached our letter dated 3 November 2015 with proposed time-frames for your attention.

Please note that we have not yet received a Notice to Oppose in respect of the Second Respondent.

Regards

*Adrian Leonard Pole*

BA,LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*  
Environmental, Health & Safety Law  
Suite 7, Village Office Park, 2 Inkonka road, Kloof  
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Tel: 031 764 2593  
Fax: 031 764 7934  
E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)  
Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

**From:** Marsh-Scott Arnelle [mailto:AMarshScott@justice.gov.za]  
**Sent:** 30 October 2015 11:23 AM  
**To:** Adrian Pole  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

Dear Mr Pole

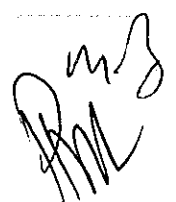
"without prejudice"

The extension request is intended for both the First and Second Respondents as consultations would have to be scheduled with both my clients to finalise the record of proceedings.

The Second Respondent has also instructed our offices to file a Notice to Oppose and I have instructed our messengers to ensure that the notice is filed and served.

Regards  
Arnelle

**From:** Adrian Pole [mailto:[adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)]  
**Sent:** 30 October 2015 11:12 AM



221

PL54.5

**Adrian Pole**

---

**From:** Marsh-Scott Arnelle <AMarshScott@justice.gov.za>  
**Sent:** 06 November 2015 11:46 AM  
**To:** Adrian Pole (adrian@adrianpole.co.za)  
**Subject:** Earthlife

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Dear Mr Pole

I acknowledge receipt of your letter as received on 4 November 2015. The letter has been forwarded to clients.

Please be advised that Senior State Attorney Mr Eben Snyman of our Pretoria State Attorney will now be acting as instructing attorney and I will be the correspondent.

Please direct all correspondence to Mr Eben Snyman. His contact details are:

State Attorney Pretoria  
012 309 16 28  
082 940 1159  
[EbSnyman@justice.gov.za](mailto:EbSnyman@justice.gov.za)

Regards  
Arnelle

AM md

**Adrian Pole**

**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 06 November 2015 03:25 PM  
**To:** 'EbSnyman@justice.gov.za'  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** FW: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS  
**Attachments:** 3 November 2015 Letter to State Attorney - Earthlife Africa JHB v Minister of Energy & Others (Case No 19529-15).pdf

Dear Eben

I refer to our telephone call this afternoon, and as discussed forward herewith a copy of our letter responding to Ms Marsh-Scott's request for an extension of time within which to file the record of proceedings, and which also includes our proposed time-frames for your consideration.

I look forward to hearing from you on Monday.

Kind regards

Adrian

*Adrian Leonard Pole*

BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

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 Suite 7, Village Office Park, 2 Inkonka road, Kloof  
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 E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)  
 Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

---

**From:** Adrian Pole [mailto:adrian@adrianpole.co.za]  
**Sent:** 04 November 2015 07:15 AM  
**To:** 'Marsh-Scott Arnelle'  
**Cc:** Cook Blanche (BCook@justice.gov.za)  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

Dear Marsh-Scott

Please find attached our letter dated 3 November 2015 with proposed time-frames for your attention.

Please note that we have not yet received a Notice to Oppose in respect of the Second Respondent.

Regards

*Adrian Leonard Pole*

BA.LLB.MEnvDev.LLM(environmental law)

PL 54.7<sup>223</sup>

**Adrian Pole**

---

**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 13 November 2015 01:06 PM  
**To:** 'EbSnyman@justice.gov.za'  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

Dear Eben

I refer to my email below and to our letter attached thereto (responding to Ms Marsh-Scott's request for an extension of time within which to file the record of proceedings, and which also included our proposed time-frames).

I would be most grateful to receive your urgent response regarding the proposed timeframes for the extension and filing of further papers.

Please also be advised that we have not yet received a Notice of Opposition in respect of the 2<sup>nd</sup> Respondent (see E-mail from Ms Marsh-Scott dated 30 October 2015 below).

Kind regards

*Adrian Leonard Pole*

BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

Environmental, Health & Safety Law

Suite 7, Village Office Park, 2 Inkonka road, Kloof

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Fax: 031 764 7934

E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)

Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

---

**From:** Adrian Pole [mailto:adrian@adrianpole.co.za]  
**Sent:** 06 November 2015 03:25 PM  
**To:** 'EbSnyman@justice.gov.za'  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** FW: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

Dear Eben

I refer to our telephone call this afternoon, and as discussed forward herewith a copy of our letter responding to Ms Marsh-Scott's request for an extension of time within which to file the record of proceedings, and which also includes our proposed time-frames for your consideration.

I look forward to hearing from you on Monday.

Kind regards

*Handwritten signature*

PL54.8

ADRIAN POLE



ENVIRONMENTAL LAW

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Email: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za) Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

Your Reference: 3081/15/P19

My Reference: AP/LP/ELA-JHB SAFCEI

State Attorney Pretoria

SALU Building

316 Thabo Sehume Street

PRETORIA

0001

Attention: Mr Eben Snyman

E-mail: [EbSnyman@justice.gov.za](mailto:EbSnyman@justice.gov.za)

19 November 2015

Dear Mr Snyman

Re: Earthlife Africa – Johannesburg / The Minister of Energy and Others

We refer to the above matter, to correspondence received from the State Attorney Cape Town (Ms Marsh-Scott) dated 29 October 2015 requesting a four week extension of time in which to file the record of proceedings, to our reply dated 3 November 2015 (subsequently forwarded to you by email on 6 November 2015) containing *inter alia* our proposals for time-frames relating to the filing of the record and subsequent papers, to my email reminder to you dated 13 November 2015, and to our telephone conversation on 16 November 2015 wherein you indicated that you had not yet received instructions from the Minister's Office and that you would respond to us before the end of the afternoon.



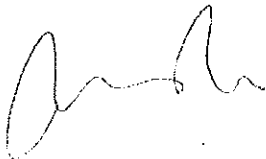
8.4.2015

To date we have not yet received your response to our proposal, and the time-frame that we proposed for the filing of the record expires tomorrow (20 November 2015). As you will be aware, in terms of Rule 53(1)(a) the time period for despatching the record of proceedings is fifteen days after receipt of the Notice of Motion. According to our calculations, this fifteen day period expired on 2 November 2015.

In the circumstances, we look forward to receiving your urgent reply to our proposals for time-frames relating to the filing of the record and subsequent papers, as well as in respect of the matter being heard on a preferent date as allocated by the Judge President. If you are not yet in a position to file the record and respond to our proposals, we would be grateful if you could advise us of the reasons for this and indicate when you anticipate being in a position to do so.

We also draw it to your attention that we have not yet received a Notice of Opposition in respect of the Second Respondent (Ms Marsh-Scott advised us by email dated 30 October 2015 that the Second Respondent had instructed the State Attorney to file a Notice to Oppose, and that her messengers had been instructed to file and serve same).

Yours sincerely



Adrian Leonard Pole



**Adrian Pole**

**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 19 November 2015 11:34 AM  
**To:** 'EbSnyman@justice.gov.za'  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS  
**Attachments:** 19 November 2015 Letter to Snr State Attorney - Earthlife Africa JHB v Minister of Energy & Others (Case No 19529-15).pdf

**Importance:** High

Dear Eben

Please find attached our letter for your urgent attention.

Kind regards

*Adrian Leonard Pole*

BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

Environmental, Health & Safety Law

Suite 7, Village Office Park, 2 Inkonka road, Kloof

KwaZulu-Natal, South Africa

Mobile: 082 3408 534

Tel: 031 764 2593

Fax: 031 764 7934

E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)

Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

**From:** Adrian Pole [mailto:[adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)]  
**Sent:** 13 November 2015 01:06 PM  
**To:** 'EbSnyman@justice.gov.za'  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS

Dear Eben

I refer to my email below and to our letter attached thereto (responding to Ms Marsh-Scott's request for an extension of time within which to file the record of proceedings, and which also included our proposed timeframes).

I would be most grateful to receive your urgent response regarding the proposed timeframes for the extension and filing of further papers.

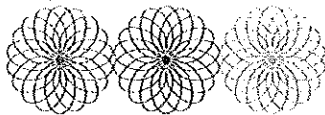
Please also be advised that we have not yet received a Notice of Opposition in respect of the 2<sup>nd</sup> Respondent (see email from Ms Marsh-Scott dated 30 October 2015 below).

Kind regards

227

PL54.9

ADRIAN POLE



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Email: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za) Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

**Your Reference:** 3081/15/P19  
**My Reference:** AP/LP/ELA-JHB SAFCEI

State Attorney Pretoria  
SALU Building  
316 Thabo Sehume Street  
PRETORIA  
0001

**Attention:** Mr Eben Snyman  
**E-mail:** [EbSnyman@justice.gov.za](mailto:EbSnyman@justice.gov.za)

25 November 2015

Dear Mr Snyman

**Re: Earthlife Africa – Johannesburg / The Minister of Energy and Others**

We refer to the above matter, to correspondence received from the State Attorney Cape Town (Ms Marsh-Scott) dated 29 October 2015 requesting a four week extension of time in which to file the record of proceedings, to our reply dated 3 November 2015 (subsequently forwarded to you by email on 6 November 2015) containing *inter alia* our proposals for time-frames relating to the filing of the record and subsequent papers, to my email reminder to you dated 13 November 2015, to our telephone conversation on 16 November 2015, and to our letter emailed to you on 19 November 2015.

28

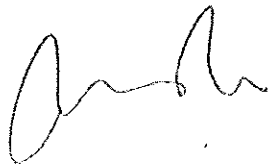
To date we have not yet received a response to (or your suggestions regarding) our proposal, and the extended time-frame that we proposed for the filing of the record expired on 20 November 2015. The usual time period for filing the Rule 53 record has also already expired, and to date the record has not yet been filed.

In light of the above, should we not receive the Rule 53 record by Friday 27 November 2015, alternatively should an agreement in relation to an acceptable time-table for the filing of the record and subsequent papers not be reached by the same date, our clients will have no choice but to instruct us to bring the necessary application to compel production of the record.

We would be grateful if you could confirm whether you have now appointed your team of Counsel, and if so advise us who has been appointed. As mentioned previously, our Counsel are Max du Plessis and Andreas Coutsoudis, and it may be preferable if your Counsel makes contact with them directly on 0845127406.

We look forward to receiving your urgent reply.

Yours sincerely



---

Adrian Leonard Pole



**Adrian Pole**

---

**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 25 November 2015 11:48 AM  
**To:** EbSnyman@justice.gov.za  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** RE: EARTHLIFE AFRICA - JOHANNESBURG / THE MINISTER OF ENERGY & OTHERS  
**Attachments:** 25 November 2015 Letter to Snr State Attorney - Earthlife Africa JHB v Minister of Energy & Others (Case No 19529-15).pdf

**Importance:** High

Dear Eben

Please find attached our further letter for your urgent attention.

Kind regards

*Adrian Leonard Pole*

BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*  
Environmental, Health & Safety Law  
Suite 7, Village Office Park, 2 Inkonka road, Kloof  
KwaZulu-Natal, South Africa  
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E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)  
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230  
PLS4.10



## Office of the State Attorney Pretoria

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SALU BUILDING  
316 THABO SEHUME STREET  
CNR FRANCIS BAARD AND  
THABO SEHUME STREET

TEL: (SWITCHBOARD): 012 309 1500  
(DIRECT LINE): 012 309 1628  
(SECRETARY): 012 309 1542

FAX: 086 507 0293  
DOCEX: 298

10 DECEMBER 2015

Enq: C E SNYMAN  
Email: [esnyman@justice.gov.za](mailto:esnyman@justice.gov.za)

My Ref: 8028/2015/Z46  
Your Ref: AP/LP/ELA-JHB  
SAFCEI

By E-mail: [Adrian@adrianpole.co.za](mailto:Adrian@adrianpole.co.za)

Messrs Adrian Pole Attorneys  
KLOOF

Dear Sir

### EARTHLIFE AFRICA – JOHANNESBURG AND ANOTHER / MINISTER OF ENERGY AND 4 OTHERS

I must apologize for reverting only at this stage to your previous correspondence.  
I was unable to do so at an earlier stage.

Kindly note that I have been instructed by the second respondent to also act on his behalf  
and to oppose the application.

Kindly note that I am in the process of compiling a record of the decisions to be reviewed.

Unfortunately this process takes longer than was initially envisaged. The documentation  
required to be included in the Record needs to be obtained from various Government  
Departments and, as you may well imagine, are of a fairly sensitive nature.

2

*Handwritten signature*

In this regard I have experienced some difficulty in obtaining the correct documentation to include in the Record.

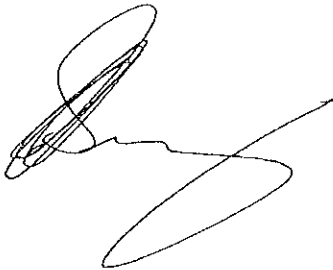
Some progress has been made in this regard.

I trust to file the Record as soon as possible and in this regard the applicant is requested to grant an indulgence to file a Record on or before 29 January 2016.

In the meantime, the first and the second respondent wish to give the assurance that they will follow any procedures as set out and required by the relevant Act or Acts for any actions that they may take relating in particular to the procurement of Nuclear Energy.

I trust to hear from you as soon as possible.

Yours faithfully



C E SNYMAN  
FOR STATE ATTORNEY PRETORIA



**Adrian Pole**

---

**From:** Snyman Eben <EbSnyman@justice.gov.za>  
**Sent:** 11 December 2015 01:47 PM  
**To:** Adrian Pole (adrian@adrianpole.co.za)  
**Subject:** EARTHLIFE AFRICA - JOHANNESBURG / MINISTER OF ENERGY & OTHERS  
**Attachments:** 8028 15 10dec15 Hole Attorneys.pdf

**Importance:** High

**Categories:** Red Category

(

(

*Handwritten signature*





# Office of the State Attorney Pretoria

233  
PL54.11

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0001

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CNR FRANCIS BAARD AND  
THABO SEHUME STREET

TEL: (SWITCHBOARD): 012 309 1500  
(DIRECT LINE): 012 309 1628  
(SECRETARY): 012 309 1542

FAX: 086 507 0293  
DOCEX: 298

15 DECEMBER 2015

Enq: C E SNYMAN  
Email: [esnyman@justice.gov.za](mailto:esnyman@justice.gov.za)

My Ref: 8028/2015/Z46  
Your Ref: AP/LP/ELA-JHB  
SAFCEI

By E-mail: [Adrian@adrianpole.co.za](mailto:Adrian@adrianpole.co.za)

Messrs Adrian Pole Attorneys  
KLOOF

Dear Sir

## EARTHLIFE AFRICA – JOHANNESBURG AND ANOTHER / MINISTER OF ENERGY AND 4 OTHERS

I refer to my previous evenly numbered letter dated 10 December 2015 as well as the Notice in terms of Rule 30A by the Applicant dated 11 December 2015.

I reiterate my view, conveyed in my previous letter, that it proved more difficult to compile the record than initially thought. It is furthermore very difficult during this time of year to obtain the complete documentation as well as to have the legal input from the whole of the legal team.

I note that the current Minister of Finance is reported in the local newspapers of 15 December 2015 as having confirmed that the procurement of nuclear electricity won't proceed unless the necessary funds are available. The Minister has in the same interview assured the population at large that proper procedures in terms of the applicable legislation will be followed before any procurement is done.

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234

In view of the above concerns, you are once again requested to agree to the late filing of the record on or before 15 January 2016.

Your kind consideration of the request will be appreciated.

Yours faithfully



C E SNYMAN  
FOR STATE ATTORNEY PRETORIA



235

**Adrian Pole**

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**From:** Snyman Eben <EbSnyman@justice.gov.za>  
**Sent:** 15 December 2015 03:08 PM  
**To:** Adrian Pole (adrian@adrianpole.co.za)  
**Subject:** EARTHLIFE AFRICA / DOE  
**Attachments:** 8028 15 15dec15 Hole Attorneys.pdf

**Importance:** High

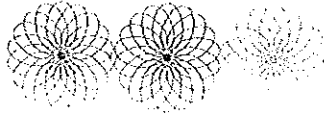
**Categories:** Red Category

*Handwritten signature*

236

PLS4-12

ADRIAN POLE



ENVIRONMENTAL ATTORNEYS

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Email: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za) Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

Your Reference: 8028/2015/Z46  
(previously 3081/15/P19)

My Reference: AP/LP/ELA-JHB SAFCEI

State Attorney Pretoria  
SALU Building  
316 Thabo Sehume Street  
PRETORIA  
0001

Attention: Mr Eben Snyman  
E-mail: [EbSnyman@justice.gov.za](mailto:EbSnyman@justice.gov.za)

17 December 2015

Dear Mr Snyman

Re: Earthlife Africa – Johannesburg / The Minister of Energy and Others

We refer to the above matter, to our clients' Notice in terms of Rule 30A served on your correspondent attorneys on 11 December 2015 (at 11h30), to your letter dated 10 December 2015 and transmitted electronically on 11 December 2015 at 13h47 (the contents of which are noted), and to your subsequent letter dated and emailed on 15 December 2015 (the contents of which are also noted).

We are pleased to advise that, having regard to the difficulties outlined in your

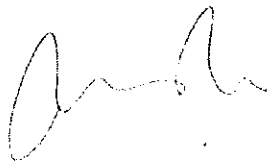
Attorney: Adrian Leonard Pole  
BA.LLB.MEnvDev.LLM(environmental law)  
VAT Registration Number: 4030234308

correspondence, our clients are (without prejudice to their rights) prepared to agree to the late filing of the Rule 53 record on or before 15 January 2016 (as proposed in your letter dated 15 December 2015). Should the record not be filed on or before this date (and the requisite notification thereof given to us), we will proceed with an application to compel without any further notice.

We also reiterate that this matter is of significant public importance, and believe it is in the interests of all parties that the matter be dealt with expeditiously as set out in the papers and previous correspondence. We still look forward to hearing your clients views regarding our proposals in this regard.

We would also be grateful if you could confirm whether you have now appointed your team of Counsel, and if so advise us who has been appointed.

Yours sincerely



---

Adrian Leonard Pole

**Adrian Pole**

---

**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 17 December 2015 12:20 PM  
**To:** 'Snyman Eben'  
**Subject:** RE: EARTHLIFE AFRICA / DOE  
**Attachments:** 17 December 2015 Letter to Snr State Attorney - Earthlife Africa JHB v Minister of Energy & Others (Case No 19529-15).pdf

Dear Eben

Please find attached our letter dated 17 December 2015.

Kind regards

*Adrian Leonard Pole*

( LL.B. MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

Environmental, Health & Safety Law

Suite 7, Village Office Park, 2 Inkonka road, Kloof

KwaZulu-Natal, South Africa

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Tel: 031 764 2593

Fax: 031 764 7934

E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)

Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

**From:** Snyman Eben [<mailto:EbSnyman@justice.gov.za>]

**Sent:** 15 December 2015 03:08 PM

**To:** Adrian Pole ([adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za))

**Subject:** EARTHLIFE AFRICA / DOE

**Importance:** High



**Adrian Pole**

---

**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 17 December 2015 02:49 PM  
**To:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** FW: EARTHLIFE AFRICA / DOE  
**Attachments:** 17 December 2015 Letter to Snr State Attorney - Earthlife Africa JHB v Minister of Energy & Others (Case No 19529-15).pdf

Dear Arnelle

For your information, please find forwarded herewith a copy of our letter emailed earlier today to Mr Eben Snyman.

Kind regards

*Adrian Leonard Pole*

( LL.B.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

Environmental, Health & Safety Law  
 Suite 7, Village Office Park, 2 Inkonka road, Kloof  
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 E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)  
 Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

**From:** Adrian Pole [<mailto:adrian@adrianpole.co.za>]

**Sent:** 17 December 2015 12:20 PM

**To:** 'Snyman Eben'

**Subject:** RE: EARTHLIFE AFRICA / DOE

Dear Eben

Please find attached our letter dated 17 December 2015.

Kind regards

*Adrian Leonard Pole*

BA,LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

Environmental, Health & Safety Law  
 Suite 7, Village Office Park, 2 Inkonka road, Kloof  
 KwaZulu-Natal, South Africa  
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 E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)

*AM*

240  
PL54.13

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 19529/15

In the matter between:

EARTHLIFE AFRICA - JOHANNESBURG First Applicant

SOUTHERN AFRICAN FAITH COMMUNITIES'  
ENVIRONMENT INSTITUTE Second Applicant

and

THE MINISTER OF ENERGY 1<sup>st</sup> Respondent

THE PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA 2<sup>nd</sup> Respondent

THE NATIONAL ENERGY REGULATOR OF  
SOUTH AFRICA 3<sup>rd</sup> Respondent

SPEAKER OF THE NATIONAL ASSEMBLY 4<sup>th</sup> Respondent

CHAIRPERSON OF THE NATIONAL COUNCIL  
OF PROVINCES 5<sup>th</sup> Respondent

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FILING SHEET

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BE PLEASED TO TAKE NOTICE that First and Second Respondents  
herewith file the record in the above matter.

*Handwritten initials/signature*



241

Dated at Cape Town on this the 23<sup>rd</sup> day of December 2015

*A. Marsh-Scott*

**THE STATE ATTORNEY (Pretoria)**

1<sup>st</sup> & 2<sup>nd</sup> Respondents' attorney

Tel. 012 309 1628

Ref. Mr Eben Snyman

c/o

**THE STATE ATTORNEY (Cape Town)**

4<sup>th</sup> Floor, Liberty Life Building

22 Long Street

Cape Town

Tel. Ms. A Marsh-Scott

**TO THE REGISTRAR, HIGH COURT**

Keerom Street

Cape Town

**AND TO ADRIAN POLE ATTORNEY**

Applicant's Attorney

Tel. 031 764 2593

email [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)

c/o

**THE LEGAL RESOURCES CENTRE**

3<sup>rd</sup> Floor, Greenmarket Place

54 Shortmarket Street

Cape Town.

Tel. 021 481 3000

Email [angela@lrc.org.za](mailto:angela@lrc.org.za)

Ref. Ms Angela Andrews

*AS* 23/12/15

*AMS*



## Office of the State Attorney Pretoria

Private Bag X 91  
PRETORIA

Salu Building  
Ground Floor  
Cnr Thabo Sehume and  
Francis Baard Street

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(Secretary): 012 309 1542

Fax 086 507 0293  
Docex: 298

12 JANUARY 2016

Enquires: C E SNYMAN

My Ref: 8028/2015/Z46 / EB

Email: [eb snyman@justice.gov.za](mailto:eb snyman@justice.gov.za)

Your Ref: AP/LP/ELA-JHB SAFCEI

By Email: [Adrian@adrianpole.co.za](mailto:Adrian@adrianpole.co.za)

Messrs Adrian Pole Attorneys  
KLOOF

Dear Sir

**EARTHLIFE AFRICA – JOHANNESBURG AND ANOTHER / MINISTER  
OF ENERGY AND 4 OTHERS**

I refer to your letter dated 17 December 2015 and confirm having noted the content thereof.

Unfortunately your letter only came to my attention on 11 January 2016.

My correspondent attorney in Cape Town informs me that a record had been served at your correspondent in Cape Town on 23 December 2015.

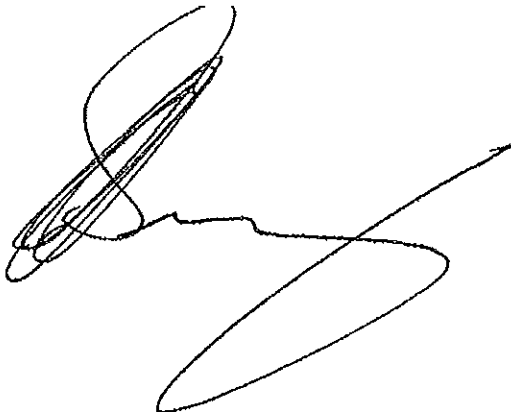
I am currently waiting for a copy of the filing document in this regard.

Kindly confirm receipt of the Record as served.

Kindly take note further that I have briefed Advocate Marius Oosthuizen SC, Advocate Mafeyisi Molea (both of Pretoria) and Advocate Kevin Warner of Cape Town of behalf of the State Respondents.

I trust to hear from you in due course.

Yours faithfully

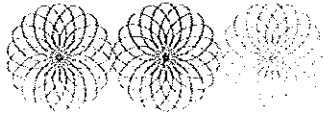
A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

**C E SNYMAN**  
**FOR: STATE ATTORNEY (PRETORIA)**

Handwritten initials or a signature in black ink, appearing to be 'PMS' or similar, written vertically.

244  
PL54.15

ADRIAN POLE



ENVIRONMENTAL LAW

Suite 7 • Village Office Park • 2 Inkonka Road • Kloof • 3610 • KwaZulu Natal • SA  
P O Box 671 • Hillcrest • 3650

Cell: 082 340 8534 • Tel: 031 764 2593 • Fax: 031 764 7934

Email: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za) Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

Your Reference: 8028/2015/Z46  
(previously 3081/15/P19)  
My Reference: AP/LP/ELA-JHB SAFCEI

**URGENT**

State Attorney Pretoria  
SALU Building  
316 Thabo Sehume Street  
PRETORIA  
0001

Attention: Mr Eben Snyman  
E-mail: [EbSnyman@justice.gov.za](mailto:EbSnyman@justice.gov.za)

15 January 2016

Dear Mr Snyman

**Re: Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others**

1. We refer to the above matter, to previous correspondence, to our Rule 30A(1) Notice, and to the Rule 53 Record filed belatedly in this matter.
2. The Rule 53 Record filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents consists of:
  - A Determination under s34(1) of the Electricity Regulation Act, 2006 (ERA), signed on 11 November 2013 by the then Minister of Energy Dikobe Ben Martins, and on 17 December 2013

by Cecilia Khuzwayo (Chairperson: NERSA) ('nuclear s34 Determination'); and

- The international governmental agreements (IGAs) on nuclear procurement tabled under s231(3) of the Constitution, the 11 June 2015 letter from the 1<sup>st</sup> Respondent to the Parliamentary Clerk of Papers giving the Parliamentary Liaison Officer permission to submit these IGAs in accordance with s231(3) of the Constitution of the Republic of South Africa, 1996 for tabling in Parliament, and the 2<sup>nd</sup> Respondent's Minute No. 314 relating to the French IGA.
3. With regard to the relief sought in our clients' Notice of Motion, this Record is incomplete, and your clients have failed to comply with our clients' Rule 30A(1) Notice. Save for the nuclear s34 Determination, the limited documents filed as allegedly forming the Record(s) in relation to the relevant decisions that are being reviewed are merely the products of the decisions made by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that our clients are seeking to Review, and do not include any of the documents, evidence, arguments and/or any other information that should have served before the 1<sup>st</sup> and 2<sup>nd</sup> Respondents at the time of making their decisions (i.e. all documents that served before the 1<sup>st</sup> and 2<sup>nd</sup> Respondents when making their respective decisions, and which pertain to the merits of those decisions).
4. With regard to the nuclear s34 Determination filed as part of the record, we are also instructed to notify you, as we hereby do, that our clients are aggrieved that the 2013 nuclear s34 Determination was deliberately withheld from the public (as stated in the DOE's Media Statement titled *Progress with the Nuclear New Build Programme* dated 26 December 2015) until published by notice in the *Gazette* on 21 December 2015 and served on us as part of the Rule 53 Record on 23 December 2015. Our clients are also aggrieved that the 1<sup>st</sup> Respondent failed to respond to our letters sent prior to commencing this litigation querying the existence of any nuclear s34 Determination (see in particular our letter to the 1<sup>st</sup> Respondent dated 26 July 2015, Annexure PL32 of our clients' Founding Affidavit, paragraphs 7.1, 7.2 and 7.3 at pages 335 and 336). The 1<sup>st</sup> Respondent's failure to respond to our letters and the decision to withhold the nuclear s34 Determination from the public for a period of two years is indicative of a general unresponsive and cavalier attitude by the 1<sup>st</sup> Respondent towards the public that she serves, and is further evidence of the gross lack of transparency that has characterised her and the government's conduct relating to the procurement of new nuclear capacity. The 1<sup>st</sup> Respondent's conduct has also directly resulted in wasted effort and unnecessary litigation in relation to those portions of the relief and founding affidavit which were predicated on the understanding that no relevant section 34(1) determinations had been made, and our clients fully intend seeking a punitive costs order in this regard in due course.



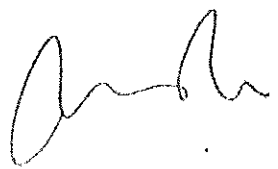
5. As a consequence of the 1<sup>st</sup> Respondent's conduct, our clients have only recently been in a position to consider and take advice on the nuclear s34 Determination. In our clients' view, the making of the nuclear s34 Determination in secret and without public participation, as well as the deliberate withholding of this Determination from the public for a period of two years, was unlawful and unconstitutional (violating *inter alia* the requirements of open, accountable and transparent government and reasonable, lawful, and procedurally fair administrative action). We are instructed to notify you, as we hereby do, that our clients intend exercising their rights in terms of Rule 53(4) to amend, add to and vary their Notice of Motion and to supplement their supporting affidavits in order to review the nuclear s34 Determination.
6. However, in advance of us doing so, we require (by 1 February 2016) that the 1<sup>st</sup> Respondent provides us with the relevant Record relating to the nuclear s34 Determination, and the decision to withhold it from the public and to only gazette it on 21 December 2015 ('the s34 Determination Record'). This includes relevant portions of the Record relating to decisions made at Cabinet Meetings held in June 2015 (at which the decision was made to proceed with developing the nuclear build programme) and 9 December 2015 (at which the decision was made to proceed with the RFP and publish the nuclear s34 Determination, and at which the Energy Security Sub-Committee provided a report-back on work done by the DOE and National Treasury in respect of funding and financing the nuclear programme).
7. Having regard to the urgency of this matter as set out in previous correspondence, as compounded by the Department of Energy's 26 December 2015 Media Statement indicating that a Cabinet Decision was made on 9 December 2015 that the Department of Energy ('DOE') should issue a Request for Proposals ('RFP') for the nuclear build programme of 9600MW of nuclear power, we call upon your clients to dispatch all of the relevant Record(s) to the Registrar (that is, the Records as more fully described in our clients' Rule 30A(1) Notice, and the full s34 Determination Record), together with the reasons for these decisions, and to notify us that they have done so, by no later than 1 February 2016.
8. Unless and until any further part of the Record(s) is provided our clients must assume that the Respondents are refusing to act transparently in providing the Court, our clients, and the public, access thereto. It seems impossible to imagine that such material and potentially adverse decisions could have been taken without further documents forming part of the decision-making. Aside from reserving our clients' rights to seek to compel the production of documents withheld, we place on record the obvious: that should the 1<sup>st</sup> and 2<sup>nd</sup> Respondent fail to provide any documents that do



form part of the Record(s), they will not be entitled belatedly to produce and rely on such documents in any answering affidavit which they may file in due course.

- 9. Upon receipt of the complete Record(s), or upon expiry of the time-frame mentioned above, we will amend, add to or vary the relevant portion of our clients' Notice of Motion and supplement their supporting affidavits as appropriate and as is their right under rule 53(4) of the Uniform Rules.
  
- 10. In the interim, our clients request that the RFP referred to in paragraph 7 above be provided so that our clients can consider the proposed procedural timeframe and steps going forward. Our clients also request an undertaking from your clients that no further steps will be taken to continue with the process of procurement of 9,600MW of nuclear power until this litigation has been adjudicated upon.
  
- 11. Our clients reserve their rights.

Yours sincerely



\_\_\_\_\_  
Adrian Leonard Pole



**Adrian Pole**

---

**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 15 January 2016 06:02 PM  
**To:** EbSnyman@justice.gov.za  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others  
**Attachments:** Letter to Snr State Attorney 15 Jan 2016 - Earthlife Africa JHB v Minister of Energy Others (Case No 19529-15).pdf

Dear Mr Snyman

Please find attached our correspondence.

Yours sincerely

*Adrian Leonard Pole*

BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

Environmental, Health & Safety Law

Suite 7, Village Office Park, 2 Inkonka road, Kloof

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Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)





249  
PL54.16

**Adrian Pole**

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**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 04 February 2016 05:08 PM  
**To:** EbSnyman@justice.gov.za  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others (Your ref. 8028/2015/Z46)

Dear Mr Snyman

I refer to our letter dated 15 January 2016, to our telephone conversation on 21 January 2016, and to our telephone conversation this afternoon.

I confirm that you have advised that you have met with your team of counsel, and that you will send me a letter tomorrow (Friday 5 February 2016) indicating what further Rule 53 Records your clients will be providing, as well as by when.

I look forward to receiving your letter, upon receipt of which I will take further instructions from my clients and consult with our counsel.

My reserve their rights.

Regards

*Adrian Leonard Pole*

BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*

Environmental, Health & Safety Law

Suite 7, Village Office Park, 2 Inkonka road, Kloof

KwaZulu-Natal, South Africa

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Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)



PL55<sup>250</sup>



## Office of the State Attorney Pretoria

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PRETORIA  
0001

SALU BUILDING  
316 THABO SEHUME STREET  
CNR FRANCIS BAARD AND  
THABO SEHUME STREET

TEL: (SWITCHBOARD): 012 309 1500  
(DIRECT LINE): 012 309 1628  
(SECRETARY): 012 309 1542

FAX: 086 507 0293  
DOCEX: 298

5 FEBRUARY 2016

Enq: C E SNYMAN  
Email: [esnyman@justice.gov.za](mailto:esnyman@justice.gov.za)

My Ref: 8028/2015/Z46  
Your Ref: AP/LP/ELA-JHB  
SAFCEI

By E-mail: [Adrian@adrianpole.co.za](mailto:Adrian@adrianpole.co.za)

Messrs Adrian Pole Attorneys  
KLOOF

Dear Sir

### EARTHLIFE AFRICA – JOHANNESBURG AND ANOTHER / MINISTER OF ENERGY and OTHERS

I refer to your letters regarding the above application, the last of which was dated 5 February 2016.

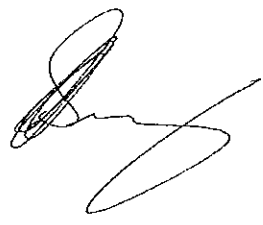
Without responding to each and every allegation in your letter, I must unfortunately inform you that I am still not in a position to finalise the supplementary record.

The matter has again been discussed with my client who indicated that they will do their best endeavors to furnish me with the outstanding documentation by Monday, 8 February 2016.

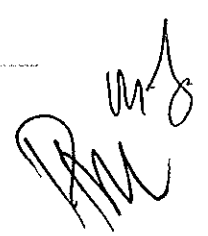
I trust to be able to furnish you with copies of the documents that, according to the State Respondents, are outstanding, by that time.

As regards paragraph 23 of your letter of 5 February 2016, kindly note that the State Respondents do not concede that the proposed procedure is the correct one under the circumstances and reserve their right to supplement the record, as already indicated.

Yours faithfully



C E SNYMAN  
FOR STATE ATTORNEY PRETORIA





# Office of the State Attorney Pretoria

PL56 252

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0001

SALU BUILDING  
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(DIRECT LINE): 012 309 1628  
(SECRETARY): 012 309 1542  
FAX: 086 507 0293  
DOCEX: 298

16 FEBRUARY 2016

Enq: C E SNYMAN  
Email: [esnyman@justice.gov.za](mailto:esnyman@justice.gov.za)

My Ref: 8028/2015/Z46  
Your Ref: AP/LP/ELA-JHB  
SAFCEI

By E-mail: [Adrian@adrianpole.co.za](mailto:Adrian@adrianpole.co.za)

Messrs Adrian Pole Attorneys  
KLOOF

Dear Sir

**EARTHLIFE AFRICA -- JOHANNESBURG AND ANOTHER / MINISTER OF ENERGY and OTHERS**

I refer to my previous letter dated 5 February 2016.

Kindly find herewith a bundle of documents that will be filed as a supplementary record to the record already filed by the state respondents.

Kindly note that the record filed previously as well as the supplementary record comprise the documentation that the state respondents regard as the record to be filed in terms of the requirements in terms of Rule 53(1).

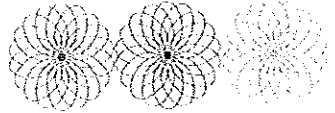
The supplementary record will be filed forthwith.

Yours faithfully

C E SNYMAN  
FOR STATE ATTORNEY PRETORIA

PL57

ADRIAN POLE



ENVIRONMENTAL LAW

Suite 7 • Village Office Park • 2 Inkonka Road • Kloof • 3610 • KwaZulu Natal • SA  
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Email: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za) Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

Your Reference: 8028/2015/Z46  
(previously 3081/15/P19)  
My Reference: AP/LP/ELA-JHB SAFCEI

“WITH PREJUDICE”

**URGENT**

State Attorney Pretoria  
SALU Building  
316 Thabo Sehume Street  
PRETORIA  
0001

Attention: Mr Eben Snyman  
E-mail: [EbSnyman@justice.gov.za](mailto:EbSnyman@justice.gov.za)

1 March 2016

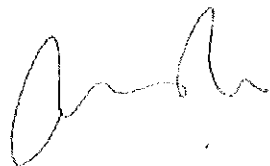
Dear Mr Snyman

Re: Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others

1. We refer to the above matter, recall the difficulties that our clients have already experienced in receiving a full record from your clients, and note the supplementary record served on our Cape Town correspondent attorneys on 19 February 2016.
2. We further note from the supplementary record provided that the following documents are referred to but not included:
  - a. The 01 December 2015 memorandum from the Director-General to the first respondent makes reference to ‘Annexure 4’ (at page 19.4 of the supplementary

- record). This annexure has not been included in the supplementary record filed;
- b. In addition to Annexure 4, the 01 December 2015 memorandum makes reference to Annexures 1-3 and 5-7. None of these annexures are marked, nor do any of these documents follow sequentially after the memorandum in the record provided, but we have reason to believe that these documents have been elsewhere included in the record provided. However, for the avoidance of any doubt, please would you confirm which documents in the supplementary record each annexure refers to (and where they appear in the record), or provide the annexures if they have not been separately included.
  - c. The copy of NERSA's *Extracts of the Minutes of the Energy Regulator Meeting No. 96 of 26 November 2013* ('NERSA Minutes') makes reference in item 5.2 b. to a letter dated 22 November 2013 from the first respondent to NERSA (at page 10.5 of the supplementary record). This letter was not included in the supplementary record filed; and
  - d. The NERSA Minutes also make reference in item 5.2 d. to the '*costs on the nuclear programme being double*', and it is noted that '*these issues have been raised with the Minister*' (at page 10.6 of the supplementary record). No correspondence or other documentation was included in the supplementary record provided wherein this issue was raised by NERSA with the first respondent or the first respondent's response thereto (if any).
3. The abovementioned documents form part of the record contemplated in Rule 53 of the Uniform Rules of Court, and we request that you provide us with copies of same, alternatively confirmation that the first respondent does not have these documents and that they did not serve before the Minister at the time that the impugned decisions were taken, by **Monday 7 March 2016**.
  4. Our clients reserve their rights.

Yours sincerely



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Adrian Leonard Pole



**Adrian Pole**

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**From:** Adrian Pole <adrian@adrianpole.co.za>  
**Sent:** 01 March 2016 03:46 PM  
**To:** EbSnyman@justice.gov.za  
**Cc:** Marsh-Scott Arnelle (AMarshScott@justice.gov.za)  
**Subject:** RE: Earthlife Africa – Johannesburg and Another / The Minister of Energy and 4 Others (Your ref. 8028/2015/Z46)  
**Attachments:** Letter to Snr State Attorney 1 March 2016 - Earthlife Africa JHB v Minister of Energy Others (Case No 19529-15).pdf

Dear Mr Snyman

Please find attached our letter dated 1 March 2016 for your urgent attention.

Regards

*Adrian Leonard Pole*  
 BA.LLB.MEnvDev.LLM(environmental law)

*Adrian Pole Attorneys*  
 Environmental, Health & Safety Law  
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 KwaZulu-Natal, South Africa  
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 Fax: 031 764 7934  
 E-mail: [adrian@adrianpole.co.za](mailto:adrian@adrianpole.co.za)  
 Web: [www.adrianpole.co.za](http://www.adrianpole.co.za)

*ms*  
*Am*