

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 23017/2022

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC
(Registration number: 2012/064213/08)

Applicant

and

**NATIONAL ENERGY REGULATOR OF
SOUTH AFRICA**

First Respondent

**KARPOWERSHIP SA COEGA
(RF) PROPRIETARY LIMITED**
(Registration number: 2020/754336/07)

Second Respondent

**KARPOWERSHIP SA SALDANHA BAY
(RF) PROPRIETARY LIMITED**
(Registration number: 2020/754347/07)

Third Respondent

**KARPOWERSHIP SA RICHARDS BAY
(RF) PROPRIETARY LIMITED**
(Registration number: 2020/754352/07)

Fourth Respondent

KARPOWERSHIP SA (PTY) LTD

Fifth Respondent

**MINISTER OF MINERAL RESOURCES AND
ENERGY N.O**

Sixth Respondent

**MINISTER OF FORESTRY, FISHERIES AND
ENVIRONMENT N.O**

Seventh Respondent

ESKOM HOLDINGS SOC LTD
(Registration number: 2002/015527/30)

Eighth Respondent

**SETTLEMENT AGREEMENT CONCLUDED BETWEEN THE
ORGANISATION UNDOING TAX ABUSE NPC, Registration number:
2012/064213/08 (APPLICANT) AND THE NATIONAL ENERGY
REGULATOR OF SOUTH AFRICA (FIRST RESPONDENT), CASE
NUMBER 23017/2022**

1. THE ORGANISATION UNDOING TAX ABUSE NPC (“OUTA”) has instituted review proceedings in the above honourable court against the above mentioned respondents, for orders reviewing and setting aside the decisions of the NATIONAL ENERGY REGULATOR OF SOUTH AFRICA (“NERSA”) to grant electricity generation licenses to KARPOWERSHIP SA COEGA (RF) PROPRIETARY LIMITED, Registration number: 2020/754336/07 (Second Respondent), KARPOWERSHIP SA SALDANHA BAY (RF) PROPRIETARY LIMITED Registration number: 2020/754347/07 (Third Respondent) and KARPOWERSHIP SA RICHARDS BAY (RF) PROPRIETARY LIMITED, Registration number: 2020/754352/07, (Fourth Respondent) and the rates to be charged.
2. NERSA, KARPOWERSHIP SA COEGA (RF) PROPRIETARY LIMITED, KARPOWERSHIP SA SALDANHA BAY (RF) PROPRIETARY LIMITED and KARPOWERSHIP SA RICHARDS BAY (RF) PROPRIETARY LIMITED all filed notices to oppose the application.

3. The full record was made available pursuant to an order of court and OUTA has filed its supplementary affidavit.

4. On or about 29 September 2024 the **MINISTER OF MINERAL RESOURCES AND ENERGY N.O** (the Sixth Respondent) informed KARPOWERSHIP in writing that:

“[5] As you are aware, the extended date for commercial Close has come and passed without the Projects Agreements being concluded or your projects reaching Commercial Close. Additionally, the extended Bid Validity Period has also lapsed as of 31 December 2023. Concurrent with the expiry of the Bid Validity period, your Preferred Bidder Guarantee has lapsed in with its terms.

[6] In the circumstances, we hereby confirm that, in view of the lapsing of the Bid Validity Period without you having signed the Project Agreements and satisfied the conditions relating to Commercial Close, your status as Preferred Bidder has now terminated by operation of law and in accordance with clause 24.6 Part A (General Requirements, Rules and Provisions) of the RFP, your Preferred Bidder Fees will not be reimbursed.”

5. None of the Karpowership respondents have refuted the statements in this correspondence.

6. In view of their inability to satisfy the conditions for commercial close, KARPOWERSHIP SA COEGA (RF) PROPRIETARY LIMITED, KARPOWERSHIP SA SALDANHA BAY (RF) PROPRIETARY LIMITED and KARPOWERSHIP SA RICHARDS BAY (RF) PROPRIETARY LIMITED have thus lost their status as preferred bidders.

7. In addition, the Republic of South Africa no longer experiences loadshedding and **ESKOM HOLDINGS SOC LTD** (the Eighth Respondent) has improved in its electricity generating capacity.
8. The application under case number 23017/2022 has accordingly become academic.
9. The parties therefore agree as follows:
 - 9.1. NERSA forthwith withdraws its opposition to the review application.
 - 9.2. That the decision of the first respondent to award a generation licence to the second respondent under application number NERSA-1532172523-62476 (“the first impugned decision”) is set aside.
 - 9.3. That the decision of the first respondent to award a generation licence to the third respondent under application number NERSA-1532172523-62559 (“the second impugned decision”) is set aside.
 - 9.4. That the decision of the first respondent to award a generation licence to the fourth respondent under application number NERSA-1532172523-62555 (“the third impugned decision”) is set aside.

9.5. NERSA is ordered to pay the costs of this application on a party and party scale on an unopposed basis, such costs to include the costs of two counsel where applicable on Scale C.

9.6. OUTA shall proceed to have the settlement agreement made an order of court on the unopposed roll.

DATED ON THIS ____ DAY OF JULY 2025.

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FOR NERSA: N MASETI

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