

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 23017/2022

In the matter between:-

ORGANISATION UNDOING TAX ABUSE NPC
(Registration no: 2012/064213/08)

APPLICANT

and

**THE NATIONAL ENERGY REGULATOR OF
SOUTH AFRICA**

FIRST RESPONDENT

KARPOWERSHIP SA COEGA (RF) (PTY) LTD
(Registration no: 2020/754336/07)

SECOND RESPONDENT

KARPOWERSHIP SA SALDANHA BAY (RF) (PTY) LTD
(Registration no: 2020/754347/07)

THIRD RESPONDENT

KARPOWERSHIP SA RICHARDS BAY (RF) (PTY) LTD
(Registration no: 2020/754352/07)

FOURTH RESPONDENT

KARPOWERSHIP SA (PTY) LTD
(Registration no: 2019/537869/07)

FIFTH RESPONDENT

IN RE: THE MAIN REVIEW APPLICATION BETWEEN:

ORGANISATION UNDOING TAX ABUSE NPC
(Registration no: 2012/064213/08)

APPLICANT

and

**THE NATIONAL ENERGY REGULATOR OF
SOUTH AFRICA**

FIRST RESPONDENT

KARPOWERSHIP SA COEGA (RF) (PTY) LTD
(Registration no: 2020/754336/07)

SECOND RESPONDENT

KARPOWERSHIP SA SALDANHA BAY (RF) (PTY) LTD
(Registration no: 2020/754347/07)

THIRD RESPONDENT

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(Registration no: 2020/754352/07)

FOURTH RESPONDENT

KARPOWERSHIP SA (PTY) LTD
(Registration no: 2019/537869/07)

FIFTH RESPONDENT

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

SIXTH RESPONDENT

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

SEVENTH RESPONDENT

ESKOM HOLDINGS (SOC) LTD
(Registration no: 2002/015527/30)

EIGHTH RESPONDENT

FILING SHEET

The First Respondent hereby files its Answering Affidavit.

Dated at **Midrand** on this **21 February 2023**



PRINCE MUDAU & ASSOCIATES (PM ATTORNEYS)

ATTORNEYS FOR THE FIRST RESPONDENT

C/O DABISHI NTHAMBELENI INC

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REF: LIT/PM/MAT180

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT

**AND TO: JENNINGS INCORPORATED
ATTORNEYS FOR THE APPLICANT**

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SERVICE BY EMAIL

**AND TO: PINSENT MASONS SOUTH AFRICA INC
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Ref: 691335.07000

SERVICE BY EMAIL

N THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No:23017/2022

In the application to compel 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

IN RE THE MAIN REVIEW APPLICATION BETWEEN

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(Registration number: 2012/064213/08)

Applicant

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**NATIONAL ENERGY REGULATOR OF
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**KARPOWERSHIP SA COEGA
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(Registration number: 2020/754336/07)
KARPOWERSHIP SA SALDANHA BAY

Second Respondent

Third Respondent

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(RF) PROPRIETARY LIMITED
(Registration number: 2020/754347/07)

KARPOWERSHIP SA RICHARDS BAY
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Fourth Respondent

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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

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

NHLANHLA GUMEDE

do hereby make oath and state that: -

1. 1.1 I am a full-time member of the First Respondent (to whom
reference, like in the Applicant's founding affidavit, will be
made as ("**NERSA**"), responsible for Electricity Regulation.
- 1.2 By virtue of my capacity and authority as stated above and
as an official assigned to deal with this matter and by virtue
of the relevant delegations, I am duly authorised to depose to

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this affidavit on behalf of NERSA and to do everything necessary to prosecute these proceedings on their behalf.

1.3 The facts herein contained are within my personal knowledge save for where otherwise stated or otherwise indicated by the context and are to the best of my knowledge and belief, both true and correct.

1.4 I have read the notice of motion and founding affidavit attached thereto and wish to respond thereto as is set out below.

1.5 I have noticed that most of the issues that the Applicant raises in respect of the compel application, are of a legal nature. Accordingly, where I make submissions of a legal nature, I do so on the advice of my legal representatives.

2. I deny, as misconstrued, every allegation made up by the Applicant, which is inconsistent with the legal and factual position that I set out in this answering affidavit.

3. I am advised that before dealing with each and every allegation made in the Applicant's founding affidavit, I should briefly deal with the following issues in order to place the matter in its proper context:-

- 3.1. locating NERSA within a democratic Constitutional dispensation;
- 3.2. the application to compel is premature in that the issue for determination remains under case management; and
- 3.3. NERSA is bound by its policy and guidelines on the treatment of confidential information submitted to it;
- 3.4. NERSA as a regulatory body.

LOCATING NERSA WITHIN A DEMOCRATIC CONSTITUTIONAL DISPENSATION

4. NERSA is a regulatory authority established as a juristic person in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004).
5. NERSA's mandate is to regulate the electricity, piped gas and petroleum pipelines industries in terms of ERA, Gas Act, 2001 (Act No. 48 of 2001) and Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).
6. The mandate of NERSA is derived from legislation governing and prescribing the role and functions of the regulator. NERSA's mission is to regulate the energy industry in accordance with government laws

and policies, standards and international best practices in support of sustainable and orderly development.

7. NERSA subscribes to the following values:-

- 7.1. passion;
- 7.2. spirit of partnership;
- 7.3. excellence;
- 7.4. innovation;
- 7.5. integrity;
- 7.6. responsibility;
- 7.7. professionalism; and
- 7.8. pride.

8. In regulating the three industries, NERSA must adhere to sound principles and approaches to be able to deliver on its mandate and achieve its objectives. Underpinned by NERSA's legal mandate, NERSA adopted the following internationally accepted regulatory principles to underpin its regulatory approach:-

- 8.1. **Transparency:** Independence from political influence is desirable to ensure long-term stability of regulatory practices. Avoidance of regulatory capture by some customer groups is also necessary for successful regulation;
 - 8.2. **Accountability:** The Energy Regulator should be accountable for its actions and decisions. Independence must not be confused with the lack of accountability;
 - 8.3. **Integrity:** The Energy Regulator should exercise honesty, fairness and sincerity in the management of the Energy Regulator's affairs and in all its dealings with stakeholders;
 - 8.4. **Efficiency:** The Energy Regulator should make the best use of resources to further the regulatory objectives by exercising objectivity and commitment to evidence-based strategies for improvement;
 - 8.5. **Public Interest:** The Energy Regulator should endeavour to take decisions in the interest of the public as far as possible.
9. NERSA has diverse regulatory functions and duties that are prescribed and described in various pieces of legislation, namely:-
- 9.1. the regulation of construction of gas transmission, storage distribution, liquefaction and re-gasification facilities and the

issuing of licences for that purpose in terms of section 4 of the Gas Act No. 48 of 2001, as well as the imposition and collection of gas regulatory levies in terms of section 2 of the Gas Regulator Levies Act No 75 of 2002;

9.2. oversight and enforcement of the regulation of generation, transmission, distribution, importation, exportation and trading in electricity and issuing licences for the lawful conduct of these activities in terms of chapter III of the Electricity Regulation Act No. 4 of 2006;

9.3. the regulation of construction, conversion and operation of petroleum pipelines, loading and storage facilities and issuing appropriate licences to applicants who wish to lawfully undertake these regulated activities, in terms of chapters 2 and 3 of the Petroleum Pipelines Act No. 60 of 2003.

10. This application ought to be viewed with reference to NERSA's mandate as provided for in the enabling legislation. As a regulator, NERSA has to consider competing interests and to apply its mind impartially as a regulator without fear or favour, but in the interest of the public at large while observing fair, transparent and lawful processes.

THE APPLICATION TO COMPEL IS PREMATURE IN THAT THE ISSUE FOR DETERMINATION IS CURRENTLY UNDER CASE MANAGEMENT


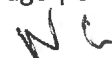
11. It is an abuse of court process to bring a case of this nature before the court. This application ought therefore to be dismissed with a costs order against the Applicant, more so, that, in its own founding papers, the Applicant rely amongst others, on annexure "FA6", which document does not find favour in the Applicant's case.
12. In terms of the contents of annexure "FA6", particularly paragraph 4 thereof, the Applicant confirmed that:-

"due to the complexity of the matter and the anticipated volume of the documents to be filed, our client has no objection to the matter being referred for case management."

13. Further, in a correspondence dated 29 August 2022, issued by Applicant's attorneys and directed to Deputy Judge President, the following is contained:-

"[2]. Record:

- 2.1 NERSA filed a redacted record on 17 June 2022 with substantial and material parts of the record redacted, despite there being no agreement in place regarding the redaction of the record.**
- 2.2 prior to the filing of the redacted record OUTA repeatedly informed the respondents that it (OUTA) could not agree to the record unless the respondents specifically indicated what parts they wished to redact, whereafter OUTA would be in a position to consider its position. Such parts were never identified.**


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2.3 OUTA further made suggestions in a letter dated 13 June 2022 regarding the confidential handling of the record whilst there was still a dispute about the redaction. No response was received to OUTA's suggestions and NERSA proceeded to file a redacted record on 17 June 2022. A brief list of the redactions that were compiled by OUTA is attached as annexure "A." This list is not exhaustive as OUTA does not have knowledge of the full extent of what was redacted.

2.4 Importantly, the financial information and projected costs of the project over 20 years are material elements of the merits of OUTA's review application and have been completely redacted without motivation.

2.5 It is OUTA's view that NERSA does not comply with the provisions of Rule 53. OUTA will accordingly request the Case Manager:

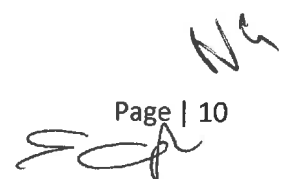
2.5.1 to direct NERSA to the complete record within 10 days;

2.5.2 should NERSA fail to file the complete record within 10 days from being directed to do so, that it be directed to file a substantive application for condonation for non compliance with the Rules of Court within 10 days thereof;

2.5.3 in the event of NERSA filing an application for condonation, that the parties be permitted to approach the Case Manager again for purposes of setting down time periods for the filing of further papers in and hearing of the interlocutory application."

14. On its own version at paragraph 55 of the founding affidavit, the Applicant further contends that there was a case management meeting on 5 September 2022 before the honourable Ledwaba DJP however, the meeting was adjourned *'with an indication from all the parties that they would attempt to find an amicable resolve.'*

15. I am advised that the case management meeting was not only adjourned to enable the parties to find each other, there was a further directive which I deem imperative which directive was to the effect that should the parties fail to reach an amicable solution, they should revert to the DJP and arrange another meeting to allow the court to issue further directives.
16. I annex the confirmatory affidavit of Mr Prince Mudau, an attorney ceased with this matter at Prince Mudau & Associates, who are our attorneys of records, marked annexure “NER1”.
17. The institution of these proceedings is illustrative of the fact that the parties have reached a stalemate regarding the filing of the records.
18. In the circumstances, based on the content of annexure “FA6”, the allegations contained in paragraph 55 of the founding affidavit and the outcome of case management meeting of 5 September 2022, it is not in dispute that the issue for determination herein is a similar issue that is pending determination under case management.
19. To qualify this assertion, I submit that when the case management meeting was adjourned, the DJP directed that in the event the parties are unable to find each other, they should revert and arrange another meeting wherein further directives will be issued regarding the filing of

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the records and the further conduct of the proceedings amongst others.

20. Having said so, this application is premature in that the issue that the Applicant seek to ventilate, lies pending under case management proceedings. At this stage, there is no directive that allows for the institution of these proceedings.
21. The referral of the matter for case management and the agenda thereof was by agreement between the parties. The directive of the DJP is binding upon all parties. In the event the Applicant is of the view that the matter is stagnant, and parties are unable to find each other, the course to follow was to request a case management meeting as previously directed. The Applicant is not at liberty to willy nally renegade from the processes that it has voluntarily subjected itself to.
22. In the circumstances, I submit that this application is premature and should be dismissed with costs including the employment of two counsel.

**NERSA IS BOUND BY ITS POLICY AND GUIDELINES ON THE
TREATMENT OF CONFIDENTIAL INFORMATION SUBMITTED TO IT**

23. In terms of NERSA's policy and guidelines, Karpowership has submitted a motivation for certain parts of its information to be treated

as confidential. The motivation is not out of the norm. it is part of NERSA's best practices.

24. The request was based on and substantiated in terms of the provisions of the Electricity Regulation Act, 2006 and the Promotion of Access to Information Act, 2000.
25. The motivation has been well considered by NERSA prior to determination. The motivation relates to Karpowership's commercial information in that should same be disclosed, it will likely cause harm to its commercial interests, put it at a disadvantage in contractual negotiations and potentially prejudice it in commercial competition.
26. The guidelines and the policy are not designed to accommodate Karpowership but to all the parties that apply to NERSA to be issued with a license.
27. By disclosing any of the confidential information to a third party, NERSA will be acting contrary to its own policy.
28. In the result, NERSA has a mandate and a duty to protect all the confidential information disclosed to it.
29. Absent any confidentiality regime being concluded, NERSA will be failing in complying with its own set policy and guidelines.

NERSA AS A REGULATORY BODY

30. It must be emphasised that the request made by the Applicant in its application to compel disclosure of confidential information, pertains to information confidentially furnished to NERSA as a regulatory body by a third party which did so being confident that such information will be handled and dealt with confidentially.
31. This is not a case where the Applicant is seeking information and/or documents pertaining to NERSA itself, but it is a case where NERSA is required to breach confidentiality pertaining to the documents which were provided to it as a regulator and under confidential circumstances.
32. It will indeed be irresponsible for NERSA, as a regulator, to share information which is clearly and obviously confidential, as it relates to commercial operations of an entity, to third parties under the circumstances of this case.
33. Fundamentally, parties which submit information to NERSA do so fully knowing and being confident that NERSA will conduct itself with the utmost integrity and be sensitive to protecting such confidential information of those parties and not to disclose same to their competitors and/or any other institution which may make such information public, to the detriment of such entities.

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34. This current application by the Applicant looses sight of a bad precedence which may cause serious relationship harm and impact on the operations and functions of NERSA as a regulator as no party may wish to co-operate with NERSA in its operations if it is discovered that NERSA shares such party's confidential information with third parties.
35. On this basis alone, this honourable court should not grant the Applicant its relief as such a court order may be used by other parties claiming to be furnished with documents which are confidential and which belongs to other parties. In turn, this will cause a regulatory nightmare for NERSA.

I now turn to deal with each, and every allegation made in the Applicant's founding affidavit.

AD PARAGRAPHS 1 TO 11

36. I note the allegations therein.

AD PARAGRAPH 12

37. As already stated in paragraphs 10 to 21 above, it is an abuse of court process by the Applicant to launch these proceedings. I reiterate that the issue for determination remains a subject matter under case management proceedings.

38. Save as aforesaid, I note the remainder of the allegations.

AD PARAGRAPH 13

39. This issue is not in contention.

AD PARAGRAPH 14

40. Save to note the objectives of the review application, which I will deal with at an appropriate moment, the remainder of the allegations are noted.

AD PARAGRAPH 15

41. I admit the allegations therein.

AD PARAGRAPHS 16 TO 18

42. I note the allegations therein.

AD PARAGRAPH 19

43. I note the allegations therein.

AD PARAGRAPHS 19.1 TO 19.2

44. NERSA's case is that in as much as Rule 53(1)(b) requires the filing of all the records that led to the taking of the decision, it is not in dispute that some of the information so required is confidential.
45. In the result, since the parties are not in agreement in so far as the production thereof is concerned, NERSA's view is that a confidentiality regime in exclusion of the Applicant's experts must be entered.
46. The basis for excluding the Applicant's experts is that:-
- 46.1. expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation;
- 46.2. an expert witness should provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise; and
- 46.3. an expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.
47. It is NERSA's view that the experts that the Applicant want to include in the confidentiality regime, were involved in the drawing of the founding papers. As a result, their objectivity is already in doubt.

48. Based on the aforesaid, I submit that it is imperative to exclude the Applicant's experts in that by being a party to the confidentiality regime, they will gain material knowledge which is a subject of the review application, thereby likely to influence their opinions.
49. In the circumstances, I submit that the Applicant's experts will in no way be objective and the only way to ensure their objectivity is to be excluded from the confidentiality regime.

AD PARAGRAPH 19.3 TO 19.4

50. I admit that the obligation to furnish the record is that of NERSA, however same should be done within the confines of its policy and guidelines.
51. In a discharge of its duties, NERSA must also comply with the Provisions of Access to Information Act, 2000 ("PAIA").
52. In the circumstances, the information so required by the Applicant is of a commercially sensitive nature which is protected in terms of the provisions of PAIA.
53. Karpowership has made a request to keep such information confidential and NERSA having considered its policy, guidelines and the provisions of PAIA, has complied with the request.

54. Save as aforesaid, the contents of the allegations are denied.

AD PARAGRAPHS 20 TO 21

55. The allegations therein are noted.

AD PARAGRAPHS 22 TO 23

56. The allegations therein are noted.

AD PARAGRAPHS 24 TO 25

57. As already stated, this application is premature. The Applicant ought to have allowed the case management process to be completed, which process will give directives on the filing of the records, amongst others.

58. Save as aforesaid, I deny the allegations therein.

AD PARAGRAPHS 26 TO 27

59. I submit that the advice provided is incorrect.

AD PARAGRAPHS 28 TO 34

60. The contents therein are common cause and therefore do not warrant an answer.

AD PARAGRAPHS 35

61. NERSA's position regarding the simultaneous determination of the two matters, will be deliberated at the pending case management meeting.

62. Save the aforesaid, I note the remainder of the allegations.

AD PARAGRAPHS 36 TO 37

63. The facts therein are common cause and therefore do not warrant a response.

AD PARAGRAPH 38

64. The decision to file the redacted record was pursuant NERSA's consideration of Karpowership's motivation towards its confidential information.

AD PARAGRAPH 39

65. I note the allegations therein.

AD APARAGRAPH 40

66. I bear no knowledge of the allegations therein.

AD PARAGRAPH 41

67. I note the allegations therein.

AD PARAGRAPH 42

68. I have already dealt with the issue.

AD PARAGRAPHS 43 TO 45

69. I note the allegations thereto.

AD PARAGRAPHS 46 TO 53

70. I am further advised that the provisions of section 10 of ERA do not create a requirement that a financial information must be certified for a licence to be issued.

71. I submit that NERSA has considered all the necessary and relevant information in reaching its decisions. The financial close of Karpowership affect NERSA in no way.

72. In terms of section 12 of ERA, NERSA ought to provide the applicant with objections for it to respond thereto. The responses are entailed in the reasons for decisions. In making its determination, It does not mean that NERSA did not consider the objections and responses prior to reaching its decision to grant the licenses.

AD PARAGRAPHS 54

73. I note the allegations therein.

AD PARAGRAPH 55

74. Save to note the contents therein, as already stated, it is imperative to point out that when the case management meeting was adjourned, it was adjourned with a directive that should the parties not find each other, they should revert and arrange a further meeting.

75. In support of this contentions, on 13 September 2022, the Applicant's attorney issued a correspondence to all the parties' representatives wherein she stated that *"... will proceed to advise the office of the Deputy Judge President that the case Management Meeting is not required at this point and that the parties will approach their office at a later stage for a meeting to be scheduled once the parties have had an opportunity to engage regarding the disputed points."*

76. A copy of the correspondence is annexure "NER2".

AD PARAGRAPH 56

77. I note the allegations therein.

AD PARAGRAPHS 57 TO 58

78. I bear no knowledge of the allegations therein.

AD PARAGRAPHS 59 TO 60

79. I deny the allegations therein.

AD PARAGRAPH 61

80. I note the allegations therein.

AD PARAGRAPHS 62 TO 64

81. I deny the allegations therein.

AD PARAGRAPH 65

82. I note the allegations therein.

AD PARAGRAPH 66

83. The allegations therein are denied.

84. As already stated, prior to the publication of the outcome and as per NERSA's policy and guidelines, Karpowership was invited to indicate which information it considers confidential, and such was considered by NERSA.

85. It is therefore on the basis of NERSA's considerations and having regard to its policy and guidelines that, it found the information confidential and subject to non-disclosure.

AD PARAGRAPH 67

86. I note the allegations therein.

AD PARAGRAPH 68

87. I deny the allegations therein.

AD PARAGRAPH 69

88. I admit the allegations therein.

AD PARAGRAPHS 70 TO 73

89. My understanding of the spreadsheet is that same is a discussion document to narrow issues pending the finalization of the confidentiality regime.

90. The Applicant remains at liberty to make an input to the spreadsheet. Same is not cast in stone.

91. Save as aforesaid, I deny the remainder of the allegations.

AD PARAGRAPHS 74 TO 75

92. I note the allegations therein.

AD PARAGRAPH 76

93. I deny the allegations therein.

94. As already stated, the issue herein is subject to case management.

95. In the event the Applicant was of the view that NERSA or any of the parties was stalling, it ought to have approached the DJP and request a meeting, having regard to its correspondence of 13 September 2022.

AD PARAGRAPH 77

96. I admit the allegations therein.

AD PARAGRAPH 78

97. I deny the allegations therein.

98. I submit that it has always been the position that in the event the parties reach a stale mate, they will approach the DJP since the matter is still under case management.

AD PARAGRAPH 79

99. I deny the allegations therein.

AD PARAGRAPHS 80 TO 81

100. I note the allegations therein.

AD PARAGRAPHS 82 TO 85

101. Save to note the allegations therein, I submit that although the experts mentioned are deemed to be external independent energy experts, in this case they are not independent in that a large part of the Applicant's case is premised upon their expertise and they have been consulted and quoted in the founding affidavit.

102. As a result, they have already participated at a greater length in the preparation of the founding affidavit, and they have also expressed a view. In that regard, they cannot be viewed as being objective. Therefore, to allege that they are independent, is incorrect.

AD PARAGRAPHS 86 TO 87

103. I note the allegations therein.

AD PARAGRAPH 88

104. The allegations therein are denied.

AD PARAGRAPHS 89 TO 96

105. Save to admit that this matter is of a National importance, I deny the remainder of the allegations.

106. As already stated, the issue for determination remains pending in the case management proceedings.

107. Therefore, it can never be correct for the Applicant to bypass the process that it has subjected itself to, and seek to have the same issue ventilated herein.

AD PARAGRAPHS 97 TO 100

108. I submit that costs are a matter of discretion for the court, and I see no reason why they should not follow the result.

WHEREFORE the I pray for the dismissal of this application with costs, which costs should include the employment of two counsel.



NHLANHLA GUMEDE

I CERTIFY that this affidavit was signed before and sworn to before me at Douglasdale on this the 21 day of FEBRUARY 2023, by the deponent who acknowledge that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on him conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God."



COMMISSIONER OF OATHS

Ek sertifiseer dat bostaande verklaring deur my
algemeen is en dat die verklaarder erken dat
hy/ sy vertrouwd is met die inhoud van hierdie
verklaring en dit begryp. Hierdie verklaring is
voor my besigtig/bevestig en verklaarder se
handtekening/mark/dakafdruk is in my
teenwoordigheid daarop aangebring.

I certify that the above statement was taken by
me and that the deponent has acknowledged
that he/she knows and understands the contents
of this statement. This statement was sworn to
/affirmed before me and deponent's signature/
mark/ thumbprint was placed thereon in my
presence.

te/m. Douglasdale op/dag 21-02-23 om/tied 12:47

(Handtekening) Kommissaris van Ede / (Signature) Commissioner of Oaths
SC Kamsar

Volle Voornaam en Van in Drukskrif / Full First names and Surname in Block letters
Edward Benjamin

Besigheidsadres (Straatadres) / Business Address (Street Address)
101 ...

Rang/Rank
SA POLISHEDIENS
SA POLICE SERVICES

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
2023 -02- 21
DOUGLASDALE
SOUTH AFRICAN POLICE SERVICE

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"NER1"

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(Registration no: 2020/754347/07)**

THIRD RESPONDENT

**KARPOWERSHIP SA RICHARDS BAY (RF) (PTY) LTD
(Registration no: 2020/754352/07)**

FOURTH RESPONDENT

**KARPOWERSHIP SA (PTY) LTD
(Registration no: 2019/537869/07)**

FIFTH RESPONDENT

IN RE: THE MAIN REVIEW APPLICATION BETWEEN:

**ORGANISATION UNDOING TAX ABUSE NPC
(Registration no: 2012/064213/08)**

APPLICANT

and

**THE NATIONAL ENERGY REGULATOR OF
SOUTH AFRICA**

FIRST RESPONDENT

**KARPOWERSHIP SA COEGA (RF) (PTY) LTD
(Registration no: 2020/754336/07)**

SECOND RESPONDENT

SP MJ

KARPOWERSHIP SA SALDANHA BAY (RF) (PTY) LTD
(Registration no: 2020/754347/07)

THIRD RESPONDENT

KARPOWERSHIP SA RICHARDS BAY (RF) (PTY) LTD
(Registration no: 2020/754352/07)

FOURTH RESPONDENT

KARPOWERSHIP SA (PTY) LTD
(Registration no: 2019/537869/07)

FIFTH RESPONDENT

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

SIXTH RESPONDENT

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

SEVENTH RESPONDENT

ESKOM HOLDINGS (SOC) LTD
(Registration no: 2002/015527/30)

EIGHTH RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SENGANI PRINCE MUDAU


do hereby state as follows:

1. I am an adult male Attorney admitted by the Transvaal Provincial Division practising as such under the style and name as Prince Mudau & Associates Inc. situated at Thornhill Office Park, Ground Floor, Building 2, 94 Bekker Street, Vorna Valley, Midrand 1685 and First Respondent's Attorneys of

SP
MJ


record herein.

2. The facts herein contained are unless the contrary appears from the context or otherwise stated, within my personal knowledge and belief and are both true and correct.
3. I have read the affidavit of **NHLANHLA GUMEDE** to which this forms an annexure and confirm the contents thereof insofar as it relates to me, as being true and correct.



DEPONENT

I hereby confirm that the deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and sworn before me at Midrand. on this 21 day of February 2023, the regulations contained in Government notices R1258 and R1648 having been complied with.



COMMISSIONER OF OATHS

Mandla Joseph Magagula
Ex Officio Commissioner of Oaths
Practising Attorney
191 Bekker Road
Vorna Valley Midrand

"NERZ"



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/
YOUR REFERENCE:
DATE: 13 September 2022

TO: PRINCE MUDAU & ASSOCIATES
(REF: LIT/PM/MAT180)

AND TO: PINSENT MASONS SOUTH AFRICA INCORPORATED
(REF: 691335/07000)

KAPITWALA INCORPORATED t/a DENTONS SOUTH AFRICA
(REF: V JACKLIN - LEVIN/0027171.01880)

CHENELLS ALBERTYN ATTORNEYS
(REF: 11306FB/cvdv)

Sirs

ORGANISATION UNDOING TAX ABUSE NPC//NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS (23017/2022)

THE GREEN CONNECTION NPC ("GREEN CONNECTION")//NATIONAL ENERGY REGULATOR OF SOUTH AFRICA & 5 OTHERS (23339/2022)

1. We refer to the abovementioned matter as well as the previous Case Management meeting held on 5 September 2022 as well as the subsequent correspondence exchanged between the parties.
2. On 12 September 2022, we received an email from the office of the Deputy Judge President, wherein a further Case Management meeting was scheduled, in the email the Registrar refers to a letter dated 2 September 2022. We assume that this was the letter that was sent on Friday afternoon. Yesterday, we directed correspondence to the various parties requesting confirmation whether any of the parties' representatives requested a further Case Management meeting to be held or whether the meeting was scheduled due to a *bona fide* error. We have not received any response from any of the representatives in this regard.

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Reg No: 2018/065399/21 | VAT No: 4660291974

Andri Jennings (LLB - UP) Director | Delia Turner (LLB - UP) Associate Attorney

Cindy Pestano (LLB - UNISA) Conveyancer | Maizze van der Linde (LLB - NWU) Attorney

Ion Jennings - Candidate Legal Practitioner | Leon van der Merwe (LLB - UP) Consultant

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3. We managed to contact the Registrar at the office of the Deputy Judge President regarding the Case Management meeting scheduled for 15 September 2022 and we were informed that the meeting was scheduled based on the letter of 2 September 2022, which was – according to the Registrar – only received on 6 September 2022.
4. As you are aware, NERSA dispatched a list of the redacted portions/items yesterday. We are still in the process of perusing the information received and due to the voluminous nature thereof, this will require some time.
5. We are of the opinion that a further Case Management meeting at this point in time will serve no purpose as there are still various aspects that the parties are attempting to resolve amongst themselves. We therefore request confirmation whether any party has an objection in us informing the office of the Deputy Judge President that the Case Management meeting scheduled for 15 September 2022, will at this point, serve no purpose subject to the disputes not having been resolved between the parties.
6. Kindly confirm by close of business today, **13 September 2022**, that we may proceed to advise the office of the Deputy Judge President that the Case Management meeting is not required at this point and that the parties will approach their office at a later stage for a meeting to be scheduled once the parties have had an opportunity to engage regarding the disputed points.
7. We await your soonest reply.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,
Andri Jennings
Director
