

CONFIDENTIALITY UNDERTAKING

in respect of

**ORGANISATION UNDOING TAX ABUSE NPC (“OUTA”) v THE NATIONAL ENERGY
REGULATOR OF SOUTH AFRICA AND 7 OTHERS IN THE HIGH COURT OF SOUTH
AFRICA, GAUTENG DIVISION, PRETORIA UNDER CASE NO: 23017/2022 (“the Review
Proceedings”)**

WHEREAS:

OUTA has instituted the Review Proceedings in the High Court of South Africa, Gauteng Division, Pretoria and as agreed to by all the parties, the first respondent, namely the National Energy Regulator of South Africa, shall file a confidential and non-confidential version of the Record in terms of Rule 53 of the Uniform Rules of Court. The Confidential Record contains the information of the Second to Fifth Respondents (collectively referred to as Karpowership) which is of a confidential, commercially sensitive and/or proprietary nature and to which only the legal representatives and/or independent experts of the parties to the Review Proceedings will have access, subject to the terms and conditions set out in this undertaking.

THEREFORE, THE PERSON REFERRED TO IN CLAUSE 2 AGREES AS FOLLOWS:

1. In this undertaking, the following expressions shall bear the following meanings and related expressions shall bear corresponding meanings:
 - 1.1. **“Confidential Information”** means the information contained in the Confidential Record.
 - 1.2. **“Confidential Record”** means the version of the Record filed by the first respondent in terms of Rule 53 of the Uniform Rules of Court and identified as being the confidential Record.
 - 1.3. **“Karpowership”** means the parties cited as the Second to Fifth Respondent in the Review Proceedings, namely, Karpowership SA Coega (RF) (Pty) Ltd, Karpowership

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SA Saldanha Bay (RF) (Pty) Ltd, Karpowership SA Richards bay (RF) (Pty) Ltd and, Karpowership SA (Pty) Ltd.

1.4. **"Non-confidential Record"** means the version of the Record filed by the first respondent in terms of Rule 53 of the Uniform Rules of Court and identified as being the Non-confidential Record.

2. I _____ hereby confirm that I am _____ and I am an _____ engaged by _____ in respect of the Review Proceedings.

2.1. In order to be provided with a copy of, or otherwise granted access to, the Confidential Record, I agree and acknowledge that I am required to provide the undertakings contained herein.

2.2. I undertake to treat the Confidential Information as strictly confidential and to use such Confidential Information solely for purposes of the Review Proceedings. In this regard, I undertake to apply the same standard of care to the Confidential Information that applies to my own proprietary, commercially sensitive, secret, or confidential information, and agree and undertake to store and handle the Confidential Information in such a way as to prevent any unauthorised disclosure thereof.

2.3. I further undertake that I will not divulge the Confidential Information, in whole or in part or in any manner or form, or permit the Confidential information to be divulged, in whole or in part or in manner or form, to any person other than:

2.3.1. with the prior written consent of Karpowership and in accordance with the terms of that consent; or

2.3.2. in accordance with an order or direction issued by the presiding judge in the Review Proceedings.

2.4. I undertake that should I identify any document and/or information of a confidential, commercially sensitive and/or propriety nature in the Non-confidential Record, that

should otherwise be properly regarded as Confidential Information, then I shall immediately notify the first respondent of the existence of such information in the Non-confidential Record.

2.4.1. The first respondent shall circulate a list of any document(s) and/or information of which they have been notified in terms of clause 2.4 to the parties to the Review Proceedings

2.4.2. Notwithstanding the presence of such information in the Non-confidential Record, any information identified in clause 2.4 is to be regarded as if it were Confidential Information.

2.5. I further undertake that, upon completion of the Review Proceedings (including any appeals), I will –

2.5.1. destroy any copies and/or replications of the Confidential Information in my possession; and

2.5.2. destroy all memoranda, notes, and other materials in respect of the Confidential Information prepared by me or any person to whom I have disclosed the Confidential Information pursuant to clause 2.3.

2.6. Certain of the provisions of this confidentially undertaking may contain stipulations for the benefit of a third party (*stipulatio alteri*). Such third party (whether a party to the Review Proceedings or otherwise) may accept the benefits of any such stipulation at any time on written notice to me.

Date

Place

Signature

Archived: Monday, 13 March 2023 17:47:54

From: [Tinyiko Ndlovu](#)

Mail received time: Tue, 24 May 2022 12:40:08

Sent: Tue, 24 May 2022 11:40:04

To: prince@pm-attorneys.co.za dineo@pm-attorneys.co.za kganedi@pm-attorneys.co.za prince@pm-attorneys.co.za dineo@pm-attorneys.co.za kganedi@pm-attorneys.co.za

Cc: [Rob Morson \(Projects\)](#) [Jason Smit](#) [Andrew Fawcett](#) [Sarah Burford](#) [Nombasa Mazwai](#) [Irene Pienaar](#) [Delia Turner](#) [Andri Jennings](#) Johannesburg.Litigation@dentons.com

Subject: RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS [PM-SA.FID40785]

Importance: Normal

Sensitivity: None

Dear Sir

In anticipation of receiving the Rule 53 record in this matter, our client has instructed us to request that a confidentiality regime first be agreed before the record is distributed. This proposal is made on the assumption that the record will include certain confidential information regarding client.

In order to control the disclosure of this information, we think the most sensible approach is for our client to either redact or exclude from the record entirely all of its confidential information and include it in a separate confidential record which will only be accessible to the Judge and the respective attorneys / advocates / experts once suitable confidentiality undertakings have been provided. The confidential record will not be shared with any other person (or uploaded onto Caselines) and will be provided to the judge directly (preferably in hard copy) in due course. Likewise, all affidavits which rely on the confidential information will also be subject to the same arrangement.

We don't think this approach will prejudice any party, particularly the Applicant, and is one that is widely adopted in this kind of matter. As part of the regime, it would be necessary for each party's legal representatives and experts to provide a written undertaking to not disclose any confidential information (including to their clients) or to utilize it for any purpose other than the review. Should you be amenable to this approach then we are prepared to draft the confidentiality undertaking which you and the attorneys for the other parties can provide comment on.

Please let us know if you have any concerns or suggestions in order to take this forward.

Tinyiko Ndlovu
Lawyer
for Pinsent Masons

D: [+27 10 493 4587](tel:+27104934587) M: [+27 66 246 8368](tel:+27662468368) I: [294587](tel:+27294587)

Winner – 'Law Firm of the Year' at the Legal Business Awards 2021

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From: Andri Jennings <andri@jinc.co.za>

Sent: Monday, 23 May 2022 11:33

To: Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>

Cc: dineo@pm-attorneys.co.za; prince@pm-attorneys.co.za; kganedi@pm-attorneys.co.za; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Sarah Burford <Sarah.Burford@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Irene Pienaar <irene@jinc.co.za>; Delia Turner <delia@jinc.co.za>

Subject: [EXTERNAL] RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS [PM-SA.FID40785] - OUT015

OUR REF: A JENNINGS / OUT015

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Archived: Monday, 13 March 2023 17:48:03

From: prince@pm-attorneys.co.za

Sent: Friday, 27 May 2022 08:49:29

To: Tinyiko Ndlovu dineo@pm-attorneys.co.za kganedi@pm-attorneys.co.za

Cc: [Rob Morson \(Projects\)](#) [Jason Smit](#) [Andrew Fawcett](#) [Sarah Burford](#) [Nombasa Mazwai](#)

Johannesburg.Litigation@dentons.com fiona@chennellsalbertyn.co.za

Subject: [EXTERNAL] RE: REVIEW APPLICATION: THE GREEN CONNECTION NPC VS NATIONAL ENERGY REGULATOR OF SOUTH AFRICA & 5 OTHERS [PM-SA.FID40785]

Importance: Normal

Sensitivity: None

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Dear Tinyiko,

We have sent same to our client for further instructions and consideration. It is our instruction that same approach was applied to our client when your client made an application. Our client is to revert with instructions on which documents were agreed to be confidential when submitted by your client and same will be communicated to you upon receipt of the identity of such information for your client to confirm.

For any more clarity, please contact the writer hereof.

Regards,

Prince Mudau



Prince Mudau & Associates

ATTORNEYS, NOTARIES AND CONVEYANCERS

Tel: 010 224 0608

Direct line: 010 224 0643

Fax: 086 695 0882

P.O Box 31884 Braamfontein 2017

Building 2 Thornhill Office Park,

94 Bekker Street, Vorna Valley, Midrand 1685.



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y

Archived: Tuesday, 14 March 2023 11:08:52

From: [Andri Jennings](#)

Sent: Monday, 30 May 2022 10:53:16

To: [Tinyiko Ndlovu prince@pm-attorneys.co.za](#) [dineo@pm-attorneys.co.za](#) [kganedi@pm-attorneys.co.za](#)

Cc: [Rob Morson \(Projects\)](#) [Jason Smit](#) [Andrew Fawcett](#) [Sarah Burford](#) [Nombasa Mazwai](#) [Irene Pienaar](#) [Delia Turner](#)
[Johannesburg.Litigation@dentons.com](#)

Subject: [EXTERNAL] RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY
REGULATOR OF SOUTH AFRICA AND 7 OTHERS [PM-SA.FID40785] - OUT015

Importance: Normal

Sensitivity: None

AA3

Good day,

1. We refer to your email of 23 May 2022 regarding your client's contention that certain documents contained in the record may be confidential and your request that a confidentiality regime be agreed upon before the record is distributed.

2. Neither our client nor our offices are in a position to agree to your client's request without knowing what information is sought to be kept confidential, especially in circumstances where your client is not the party from whom the record is requested.

3. We therefore request that you first specify which documents your client wishes to keep confidential and the reasons for this, so that we can be in a better position to consider your proposal.

We await your soonest reply.

Kind Regards/Vriendelike Groete,
Andri Jennings
Director/Direkteur



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B.R.
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CHENNELLS ALBERTYN
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7
AA4

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FAX: +27 (0) 21 883 8910
E-MAIL: fiona@chennellsalbertyn.co.za
WEBSITE: www.chennellsalbertyn.co.za

2 June 2022

Our ref: 11306FB/cvdv
Your ref: 691335.0700

Pinsent Masons South Africa Inc

Attention: Tinyiko Ndlovu

Per email: Tinyiko.Ndlovu@pinsentmasons.com
Andrew.Fawcett@pinsentmasons.com
Jason.Smith@pinsentmasons.com
Sarah.Burford@pinsentmasons.com
Rob.Morson@pinsentmasons.com
Nombasa.Mazwai@pinsentmasons.com

cc: Prince Mudau & Associates
Per email: prince@pm-attorneys.co.za
dineo@pm-attorneys.co.za
kganedi@pm-attorneys.co.za
Dentons
Per email: Johannesburg.Litigation@dentons.com

Dear Sirs

**RE: THE GREEN CONNECTION / NATIONAL ENERGY REGULATOR OF SOUTH AFRICA
AND 5 OTHERS**

We have noted your request that a confidentiality regime be agreed upon before the Record is distributed as requested in your email dated the 24th ultimo. Kindly note that our instructions are that we will only be in a position to consider your request should the following be clarified:

1. kindly provide a list of the documents which your client regards as being confidential information;
2. kindly provide our offices with reasons why your client considers the listed documentation or information as confidential.

We will only be in a position to consider agreeing to a confidentiality regime once we are in possession of the information.

Partners: GE Williams BA LLB; F Bester Bluris BProc; AJ Dorer LLB; S Etsebeth LLB; GJ Hendriksz BSocSc LLB
Assisted by: E Mukasa LLB
Consultants: RS Chennells BCom LLB LLM PhD

Rondebosch: 18A Greenwich Grove, Station Road,
Rondebosch, 7700 • PO Box 78, Newlands, 7725
Tel: 021 685 8354 • Fax: 021 685 0710
• E-mail: info@chennellsalbertyn.co.za

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• PO Box 1022, Stellenbosch, 7599
Tel: 021 883 3189/883 8069 • Fax: 021 883 8910
• E-mail: chenstel@chennellsalbertyn.co.za

In association with Chrystelle van Staden Attorneys



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Kindly further note that the Record should be served and filed by no later than 8 June 2022 in terms of our agreement in respect of extension of time.

Yours faithfully

FIONA BESTER
CHENNELLS ALBERTYN



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Archived: Monday, 13 March 2023 17:48:23

From: [Tinyiko Ndlovu](#)

Mail received time: Fri, 3 Jun 2022 15:13:13

Sent: Fri, 3 Jun 2022 14:13:06

To: carol@chennellsalbertyn.co.za prince@pm-attorneys.co.za dineo@pm-attorneys.co.za kganedi@pm-attorneys.co.za fiona@chennellsalbertyn.co.za prince@pm-attorneys.co.za dineo@pm-attorneys.co.za kganedi@pm-attorneys.co.za

Cc: Johannesburg.Litigation@dentons.com [Jason Smit](#) [Andrew Fawcett](#) [Rob Morson \(Projects\)](#) [Nombasa Mazwai](#) [Sarah Burford](#)

Subject: RE: The Green Connection / NERSA and others [PM-SA.FID40785]

Importance: Normal

Sensitivity: None

Dear All

Our client cannot respond to the applicant's request until it knows what the first respondent intends including in the record.

On 27 May, the first respondent's attorneys indicated that they were waiting for instructions on the composition of the record and, as far as we know, they have not given an update. We would appreciate it if the applicant's attorneys let us know the current status of this issue.

With that said, our client is concerned that an extension to the filing of the record has supposedly been agreed without its involvement or knowledge. This is obviously inappropriate in circumstances where our client is represented and has delivered its notice of intention to oppose. We request that we be included in all correspondence related to this matter going forward.

We reiterate that it would be suitable to agree a confidentiality regime before the delivery of the record and our client is prepared to assist the first respondent in any way to expedite this process. Our view is that agreeing this regime before the record is delivered will not prejudice the applicant because (i) the regime contemplated would enable it's attorney to seek the disclosure of relevant confidential information either with consent or through approaching the court for an order and (ii) the applicant's affidavit already identifies the information our client considers confidential.

We will share a draft of the proposed undertaking for your consideration. Should the record nevertheless be made available on 8 June either without agreeing the confidentiality undertakings or in a form that otherwise violates our client's rights then we will take the necessary measures.

Tinyiko Ndlovu
Lawyer
for Pinsent Masons

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From: Carol van der Vyver | Chennells Albertyn <carol@chennellsalbertyn.co.za>

Sent: Friday, 03 June 2022 09:30

To: Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; 'Jason Smith' <Jason.Smith@pinsentmasons.com>; Sarah Burford <Sarah.Burford@pinsentmasons.com>; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; prince@pm-attorneys.co.za; 'Dineo' <dineo@pm-attorneys.co.za>; kganedi@pm-attorneys.co.za; 'Dentons' <Johannesburg.Litigation@dentons.com>

Cc: fiona@chennellsalbertyn.co.za

Subject: [EXTERNAL] The Green Connection / NERSA and others

Dear Sirs

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Archived: Tuesday, 14 March 2023 11:13:23

From: [Andri Jennings](#)

Sent: Monday, 06 June 2022 09:40:27

To: [Tinyiko Ndlovu prince@pm-attorneys.co.za](#) [dineo@pm-attorneys.co.za](#) [kganedi@pm-attorneys.co.za](#)

Cc: [Rob Morson \(Projects\)](#) [Jason Smit](#) [Andrew Fawcett](#) [Sarah Burford](#) [Nombasa Mazwai](#) [Irene Pienaar](#) [Delia Turner](#) [Johannesburg.Litigation@dentons.com](#)

Subject: [EXTERNAL] RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS [PM-SA.FID40785] - OUT015

Importance: Normal

Sensitivity: None

Good day.

We refer to the abovementioned matter as well as the correspondence below.

We have noted that we have not received a reply to our email, and we would appreciate your soonest response.

Thank you.

Kind Regards/Vriendelike Groete,
Andri Jennings
Director/Direkteur



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From: Andri Jennings

Sent: 30 May 2022 10:53 AM

To: Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>; prince@pm-attorneys.co.za; dineo@pm-attorneys.co.za; kganedi@pm-attorneys.co.za

Cc: Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Sarah Burford <Sarah.Burford@pinsentmasons.com>; Nombasa Mazwai

AA7

Archived: Monday, 13 March 2023 17:48:41

From: [Tinyiko Ndlovu](#)

Mail received time: Mon, 6 Jun 2022 08:58:26

Sent: Mon, 6 Jun 2022 07:58:23

To: [Andri Jennings](#) prince@pm-attorneys.co.za dineo@pm-attorneys.co.za kganedi@pm-attorneys.co.za prince@pm-attorneys.co.za dineo@pm-attorneys.co.za kganedi@pm-attorneys.co.za

Cc: [Rob Morson \(Projects\)](#) [Jason Smit](#) [Andrew Fawcett](#) [Sarah Burford](#) [Nombasa Mazwai](#) [Irene Pienaar](#) [Delia Turner](#) Johannesburg.Litigation@dentons.com

Subject: RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015 [PM-SA.FID40785]

Importance: Normal

Sensitivity: None

Dear Andri

Our client cannot respond to your client's request until it knows what the first respondent intends including in the record.

With respect to the application which has been instituted by Green Connection, NERSA's attorneys indicated that they are still waiting for instructions regarding the composition of the record. We assume that is the case in this matter as well.

Our view is that the information requested by your client is not necessary for an agreement on the undertaking because it is already evident from your client's papers what that information pertains to. In any event, the proposed undertaking would allow for any confidential information the applicant's attorney considers to be relevant to be disclosed either by agreement or by obtaining a court order.

We have been informed that, as far as the green connection review is concerned, NERSA has agreed an extension to the filing of the record without our client's knowledge or involvement. We do not know if a similar agreement has been reached with your client as well however we would highlight that, if this is the case, it would be inappropriate in circumstances when our client is opposing the matter and has appointed attorneys.

We think its preferable for this agreement to be reached before the record is delivered in order to avoid potential interlocutory disputes which may frustrate the expeditious running of this matter. We will share a draft of our proposed undertaking for your client to consider in the meantime.

Tinyiko Ndlovu
Lawyer
for Pinsent Masons

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From: Andri Jennings <andri@jinc.co.za>

Sent: Monday, 06 June 2022 09:40

To: Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>; prince@pm-attorneys.co.za; dineo@pm-attorneys.co.za; kganedi@pm-attorneys.co.za

Cc: [Rob Morson \(Projects\)](mailto:Rob.Morson@pinsentmasons.com) <Rob.Morson@pinsentmasons.com>; [Jason Smit](mailto:Jason.Smit@Pinsentmasons.com) <Jason.Smit@Pinsentmasons.com>; [Andrew Fawcett](mailto:Andrew.Fawcett@pinsentmasons.com) <Andrew.Fawcett@pinsentmasons.com>; [Sarah Burford](mailto:Sarah.Burford@pinsentmasons.com) <Sarah.Burford@pinsentmasons.com>; [Nombasa Mazwai](mailto:Nombasa.Mazwai@pinsentmasons.com) <Nombasa.Mazwai@pinsentmasons.com>; [Irene Pienaar](mailto:Irene.Pienaar@jinc.co.za) <Irene.Pienaar@jinc.co.za>; [Delia Turner](mailto:Delia.Turner@jinc.co.za) <Delia.Turner@jinc.co.za>; Johannesburg.Litigation@dentons.com

Subject: [EXTERNAL] RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS [PM-SA.FID40785] - OUT015

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ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015
YOUR REFERENCE:
DATE: 07 June 2022

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

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

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

Sirs

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

1. We refer to your email of 6 June 2022.
2. We have already indicated in our correspondence of 30 May 2022 that neither our client nor our offices are in a position to agree to your client's request that a confidentiality regime is agreed upon without knowing what information is sought to be kept confidential, especially in circumstances where your client is not the party from whom the record is requested.
3. Our client can accordingly not agree to a blanket confidentiality agreement. In order to avoid going around in circles, we will not engage in any further correspondence in this regard unless we receive the information requested in our correspondence of 30 May 2022.
4. We record that your client's Notice of Intention to Oppose which was sent by email on 20 May 2022 (without prior agreement for service to take place by email), was sent out of time.

www.jinc.co.za

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

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

Cindy Pestano (LLB - UNISA) Conveyancer | Suléne van Rensburg (BA - LLB) Associate Attorney, Notary and Conveyancer

Malizza van der Linde - Candidate Legal Practitioner | Ian Jennings - Candidate Legal Practitioner



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21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 258 8770

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5. We further record that on 17 May 2022, our offices received a request from NERSA for an extension of time to file the record by no later than 10 June 2022. On 19 May 2022 (and prior to your client's late filing of its Notice of Intention), we advised NERSA's attorneys that our client would grant such an indulgence.
6. We therefore disagree with your insinuation that such an indulgence to NERSA granted by our client is inappropriate in the circumstances:
 - a) your client failed to file a timely Notice of Intention to Oppose and there was no attorney on record at the time on behalf of your client;
 - b) the indulgence was granted only on behalf of our client and not on behalf of any other party to the proceedings.
7. Should your client have any further concerns in this regard, we suggest that it should exercise any remedies that may be available to it in an appropriate forum.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,
Andri Jennings
Director



Pinsent Masons

BY E-MAIL

Email:

prince@pm-attorneys.co.za

andri@iinc.co.za

fiona@chennellsalbertyn.co.za

Our Ref:689385.1 \691335.07000

DDI +27104934587

E: Jason.Smit@pinsentmasons.com
Andrew.Fawcett@pinsentmasons.com

9 June 2022

DIRECTORS
 Junaid Banoobhai
 Claire Barclay
 Rob Morson
 Deldre Simaan
 Jurg van Dyk
 Daniella Zussa
 Jason Stuart Smit
 Christopher Bernard Green

Dear All

ORGANISATION UNDOING TAX ABUSE NPC ("OUTA") // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA ("NERSA") AND 7 OTHERS (CASE NO: 23017/2022)

THE GREEN CONNECTION NPC ("GREEN CONNECTION") // NATIONAL ENERGY REGULATOR OF SOUTH AFRICA & 5 OTHERS (CASE NO: 23339/22)

1. We address you on behalf of our client, Karpowership SA (Pty) Ltd and its subsidiaries namely, Karpowership SA Saldanha Bay (RF) Proprietary Limited, Karpowership SA Coega (RF) Proprietary Limited and Karpowership SA Richard's Bay (RF) Proprietary Limited (collectively referred to as "**Karpowership**") in relation to the above matters.
2. The purpose of this letter is to inform you that our client has instructed us to write to the Deputy Judge President ("**DJP**") requesting that the reviews instituted by OUTA and GC be case managed with the objective of having them heard jointly and on an expedited basis.
3. The reviews clearly have factual, procedural and legal overlaps and Karpowership believes that such an approach would be to the benefit of all parties as it would help limit costs and prevent inefficient and duplicated proceedings.
4. In addition, given that the decision in question is related to the Government's Risk Mitigation IPP Procurement Programme ("**RMIPPPP**"), reaching finality on these matters on an urgent basis is in the public's interest.
5. We are sharing a draft of the letter we intend sending to the DJP with you as a courtesy and invite you to give your comments. The letter proposes that the parties convene a case management meeting to further discuss our client's proposal and agree an expedited hearing timetable.

Pinsent Masons South Africa Inc (registered no.F17331)
 61 Katherine Street Sandton Gauteng Johannesburg 2196
 T +27 10 493 4600 F +27 10 493 4611

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For a full list of the jurisdictions where we operate, see www.pinsentmasons.com

B.R



6. Should your clients not be amenable to this approach then we will advise the DJP accordingly and invite him to give a directive.
7. In addition, we understand that separate agreements have been reached with NERSA by both GC and OUTA for an extension to the delivery of the record. Given that the parties have been unable to agree a confidentiality regime, our client proposes that this issue also be directed by the DJP. In the interim, our client requests that the record only be delivered in a redacted form. This is necessary to protect our client's rights as this information qualifies for protection under PAIA, POPIA and the terms of the RMIPPPP and to ensure that NERSA does not breach its own obligations under these provisions.
8. We would appreciate it if you would confirm your clients' position on our proposal and let us have your comments to the draft letter by Monday, 13 June 2022.

Yours faithfully

Pinsent Masons South Africa Inc (registered no.F17331)

This letter is sent electronically and so is unsigned

CHENNELLS ALBERTYN
ATTORNEYS, NOTARIES & CONVEYANCERS

P.O. BOX 1022
STELLENBOSCH 7599

44 ALEXANDER STREET
STELLENBOSCH 7600
SOUTH AFRICA

TEL: +27 (0) 21 883 3189
FAX: +27 (0) 21 883 8910
E-MAIL: fiona@chennellsalbertyn.co.za
WEBSITE: www.chennellsalbertyn.co.za

10 June 2022

Our ref: 11306FB/cvdv
Your ref: 691335.0700

Pinsent Masons South Africa Inc

Attention: Tinyiko Ndlovu

Per email: Tinyiko.Ndlovu@pinsentmasons.com
Andrew.Fawcett@pinsentmasons.com
Jason.Smit@pinsentmasons.com
Sarah.Burford@pinsentmasons.com
Rob.Morson@pinsentmasons.com
Nombasa.Mazwai@pinsentmasons.com

cc: Prince Mudau & Associates

Per email: prince@pm-attorneys.co.za
dineo@pm-attorneys.co.za
kganedi@pm-attorneys.co.za

Dentons

Per email: Johannesburg.Litigation@dentons.com

Dear Mr Ndlovu

**RE: THE GREEN CONNECTION / NATIONAL ENERGY REGULATOR OF SOUTH AFRICA
AND 5 OTHERS / CASE NO. 23339/2022**

With reference to your letter dated the 9th instant, our instructions are as follows:

1. We are in agreement that the Deputy Judge President may be requested for his directives as follows:
 - 1.1. that both matters, namely the "The Green Connection" matter as well as the "OUTA" matter be heard jointly'
 - 1.2. that the hearing(s) be expedited;
 - 1.3. that a case management meeting is convened to discuss any proposals and agree on an expedited hearing timetable.

Partners: GE Williams BA LLB; F Bester BLuris BProc; AJ Dorer LLB; S Etsebeth LLB; GJ Hendriksz BSocSc LLB
Assisted by: E Mukasa LLB
Consultants: RS Chennells BCom LLB LLM PhD

Rondebosch: 18A Greenwich Grove, Station Road,
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Tel: 021 685 8354 • Fax: 021 685 0710
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• E-mail: chenstel@chennellsalbertyn.co.za

In association with Chrystelle van Staden Attorneys

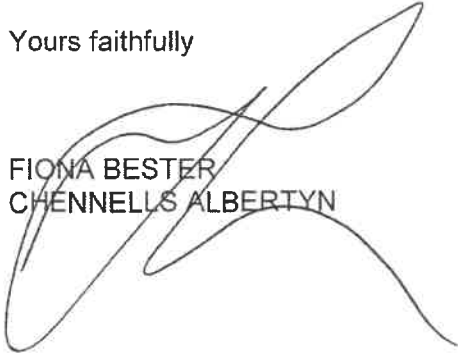


B.R
K

2. Further to the above, we request you to provide us with a draft agreement pertaining to the confidentiality regime, which will be considered by our client. Kindly further note that we are placing on record that we are not in agreement with the proposed letter you intend to submit to the Deputy Judge President, apart from our agreement as indicated in paragraphs 1.1 to 1.3 above.

Yours faithfully

FIONA BESTER
CHENNELLS ALBERTYN

A large, stylized handwritten signature in black ink, appearing to be 'Fiona Bester', written over the printed name.

4

B.R.
4



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015

YOUR REFERENCE:

DATE: 13 June 2022

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

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: UNKNOWN)

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 address this letter to you on behalf of our client, the Organisation Undoing Tax Abuse NPC ("OUTA").
2. We refer to your letter dated 9 June 2022 as well as the accompanying draft letter that your offices intend to send to the DJP and to which our comments were invited.

www.jinc.co.za

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

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

Cindy Pestano (LLB - UNISA) Conveyancer | Suléne von Rensburg (BA - LLB) Associate Attorney, Notary and Conveyancer
Malizzo von der Linde - Candidate Legal Practitioner | Ian Jennings - Candidate Legal Practitioner

office@jinc.co.za

Head Office: 149 Anderson Street, Brooklyn, Pretoria | O: 012 110 4442

18 Ross Street, Cullinan | O: 012 110 4442

222 Smit Street, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572

21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 258 8770

3. We request that, should you send the intended letter, you remove the last sentence in paragraph 1.3 thereof and instead attach this letter with our client's views and comments thereto and specifically draw the DJP's attention to it.

Ad request for case management:

4. We confirm 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.

Ad background contained in your draft letter:

5. We note the background provided in paragraph 2 of your draft letter, which refers to the merits of the application and seeks to establish a basis for urgency. It also gives the impression that "but for" these review applications the project can proceed. This is not the case.
6. It is not our intention to discuss the merits of these applications in correspondence, but for the sake of transparency we believe that if such background is provided (particularly if it is used as a justification for an accelerated timeline), it is imperative that it is also recorded that your client does not have the necessary environmental authorisations in place to proceed with the project.



7. Regardless of the outcome of these review applications pertaining to the electricity generation licences, your client will not be able to proceed with the project without strictly complying with the provisions of the relevant environmental legislation.

Ad consolidation or joint hearing:

8. We note that your letter refers to both a joint hearing or a consolidation of the two matters. We point out that there is a clear distinction between a joint hearing of matters and a consolidation of matters.
9. Our client is not a party to the Green Connection application and does not have access to Green Connection's application on Caselines. If the relief requested is substantially the same as indicated in your letter, our client has no objection in principle to a joint hearing (provided we are given access to the Green Connection application on Caselines and have the opportunity to properly peruse it and consult thereon).
10. However, our client will not agree to a consolidation of the two applications.

Ad confidentiality of documents:

11. We have already pointed out to you twice that our client cannot agree to a blanket confidentiality arrangement without knowing which documents/information your client wishes to keep confidential. We have invited your client to identify such documents/information so that we can reasonably assess the request, but your client has declined the invitation.



12. What documents your client has provided to NERSA during the application process is known only to your client and NERSA. Your client should therefore be able to predict with a fair degree of certainty what information relating to it will be contained in the record. In view of the above, we fail to understand why your client has declined to specify the documents/information it wishes to keep confidential.
13. In order to save time and to demonstrate our client's *bona fides* in this regard, we suggest the following:
- 13.1 that when the record is provided, writer hereof undertakes not to disclose the documents to OUTA, but to keep them in her office and disclosed and discuss them only with our client's appointed counsel until your client has identified which of the information it considers confidential;
- 13.2 once your client has clearly identified this information, writer hereof (in consultation with counsel) will review the information together with the reasons given for the alleged confidentiality and then comment on it;
- 13.3 should there be a dispute as to the confidentiality of the documents/information identified and/or its inclusion in the record, a time period will be agreed between the parties within which your client may apply by way of an interlocutory application for a court to rule on the confidential nature of the documents/information. The parties will further agree time periods within which further papers in such an application must be filed. Pending the outcome of such an application writer hereof shall only give access to the record to our client's appointed counsel.

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Ad indulgence for late delivery of the record:

14. We record that your client's notice of intention to oppose was filed out of time and only on 20 May 2022. On 17 May 2022, NERSA requested our client's indulgence to file the record by no later than 10 June 2022. The indulgence was granted on behalf of our client on 19 May 2022.
15. We confirm that, despite the indulgence that was granted, NERSA did not deliver the record by 10 June 2022.

Ad special allocation:

16. We disagree with your assertions under the heading "*Conclusion*" in your letter, and in particular the inaccurate impression created that these review applications are causing a delay in resolving the problem of South Africa's electricity supply, and that an expedited hearing of these applications will lead to resolving the electricity crisis. As pointed out above and in our client's founding papers, there are still several unresolved issues independent of our client's review application pertaining to the RMIPPPP without which your client cannot proceed.
17. To the extent that it is implied that these review applications are "disruptive" and negatively impact the public, our client holds the opposite view and believes that it is the granting of the licences and potential implementation of the project that is highly detrimental to the public at large.
18. We therefore deny that the allegations contained in your letter constitute a proper basis for an urgent or expedited hearing in this matter.

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19. However, due to the anticipated volume of the application (with the documents expected to exceed 500 pages, especially if the matters are heard together) and the expected longer duration of the hearing, our client has no objection to the parties requesting a special allocation subject to the availability of counsel for all parties.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,
Andri Jennings
Director

AA12



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015
 YOUR REFERENCE: LIT/PM/MAT180
 DATE: 15 June 2022

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

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

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

Sirs

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

1. We refer to the abovementioned matter as well as our letter 19 May 2022 in response to your letter dated 17 May 2022.
2. We confirm that we have not received the record, as per our good faith indulgence, for the late filing thereof on or before 10 June 2022.
3. Kindly confirm as to when we shall receive the record in order for us to advise our client and obtain further instruction herein.
4. Your soonest reply will be appreciated.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,

Andri Jennings

Director



Archived: Monday, 13 March 2023 17:49:03

From: [Kganedi](#)

Sent: Wednesday, 15 June 2022 12:16:07

To: [Andri Jennings](#)

Cc: [prince@pm-attorneys.co.za](#) [dineo@pm-attorneys.co.za](#) [Irene Pienaar](#) [Rob Morson \(Projects\)](#) [Jason Smit](#) [Andrew Fawcett](#) [Sarah Burford](#) [Nombasa Mazwai](#) [Johannesburg.Litigation@dentons.com](#) [Tinyiko Ndlovu](#)

Subject: [EXTERNAL] Re: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

Importance: Normal

Sensitivity: None

AA13

Dear Sirs

The delay in filing the record is regretted, owing to the dispute that arose in respect of the confidential information contained therein.

We are now waiting for the two redacted applications from client so we can file in the meantime pending directives from the DJP, which we expect to hopefully do so by Friday.

Yours sincerely,

Get [Outlook for Android](#)

From: Andri Jennings <andri@jinc.co.za>

Sent: Wednesday, 15 June 2022, 12:09

To: kganedi@pm-attorneys.co.za <kganedi@pm-attorneys.co.za>

Cc: prince@pm-attorneys.co.za <prince@pm-attorneys.co.za>; dineo@pm-attorneys.co.za <dineo@pm-attorneys.co.za>; Irene Pienaar <irene@jinc.co.za>; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Sarah Burford <Sarah.Burford@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Irene Pienaar <irene@jinc.co.za>; Johannesburg.Litigation@dentons.com <Johannesburg.Litigation@dentons.com>; Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>

Subject: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

Good day.

Please find attached hereto a letter for your attention.

25



Archived: Tuesday, 14 March 2023 11:19:55
From: Andri Jennings
Sent: Wednesday, 15 June 2022 12:49:15
To: Kganedi
Cc: prince@pm-attorneys.co.za; dino@pm-attorneys.co.za; Irene Pienaar; Rob Morson (Projects); Jason Smit; Andrew Fawcett; Sarah Burford; Nombasa Mazwai; Johannesburg Litigation@dentons.com; Tinyiko Ndlovu
Subject: [EXTERNAL] RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015
Importance: Normal
Sensitivity: None

26

AA14

Good day,

We refer to the above-mentioned matter as well as your email dated 15 June 2022 below has reference.

1. We place on record that our client has not consented to a unilaterally redacted version of the record being filed.
2. We further refer you to the undertaking contained in our letter of 13 June 2022 and specifically paragraph _____ wherein writer, hereof undertook to keep the record confidential pending agreement between the parties, alternatively and order / directive from the court.
3. There is accordingly no reason for your client to further delay the filing of the record in violation of your undertaking of 17 May 2022.

Kind Regards/Vriendelike Groete,
Andri Jennings
Director/Direkteur



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From: Kganedi <kganedi@pm-attorneys.co.za>
Sent: 15 June 2022 12:16 PM
To: Andri Jennings <andri@jinc.co.za>
Cc: prince@pm-attorneys.co.za; dino@pm-attorneys.co.za; Irene Pienaar <irene@jinc.co.za>; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Jason Smit <jason.smit@pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Sarah Burford <Sarah.Burford@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>
Subject: Re: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

Dear Sirs

The delay in filing the record is regretted, owing to the dispute that arose in respect of the confidential information contained therein.

We are now waiting for the two redacted applications from client so we can file in the meantime pending directives from the DIP, which we expect to hopefully do so by Friday.

Yours sincerely,

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From: Andri Jennings <andri@jinc.co.za>
Sent: Wednesday, 15 June 2022, 12:09
To: Kganedi <kganedi@pm-attorneys.co.za>; dino@pm-attorneys.co.za <dino@pm-attorneys.co.za>; Irene Pienaar <irene@pm-attorneys.co.za>; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Jason Smit <jason.smit@pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Sarah Burford <Sarah.Burford@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>
Subject: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

Good day,

Please find attached hereto a letter for your attention.

26

Archived: Tuesday, 14 March 2023 11:23:26

From: Tinyiko Ndlovu

Sent: Wednesday, 15 June 2022 13:58:35

To: Andri Jennings Kgamedl

Cc: prince@pin-attorneys.co.za; Irene Plenaar Rob Morson (Projects) <Rob.Morson@pin-sentmasons.com>; Jason Smit <Jason.Smit@pin-sentmasons.com>; Sarah Burford Nombasa Mazwai <Johannesburg.Litigation@dentons.com>

Subject: RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015 [PM-SA.FID40785]

Importance: Normal

Sensitivity: None

Attachments:

Draft Confidentiality Undertaking - GC review - 14 June 2022(692785.2).docx; Draft Confidentiality Undertaking - OUTA review - 15 June 2022(690584.3).docx; PW L - Honourable Deputy Judge President - 2022.06.15 (amended)(687262.13).docx.

27

AA15.1

Dear All

We reiterate that our client's confidential information cannot be disclosed in any form absent a suitable confidentiality regime. NERSA is obliged to maintain the confidentiality of this information and the applicants have no automatic entitlement to it. It is for that reason that paragraph 13 of Ms Jennings' proposal as currently formulated is unsuitable.

Our client has offered a framework for disclosure which has been confirmed as satisfactory by the Constitutional Court (drafts are attached). As already pointed out, agreement on this regime does not require our client to provide a list in the form requested by the applicants as it is evident from their own papers what that information relates to. With that said, we are consulting with our client as far as this is considered and will communicate our instructions to you as soon as we are able to.

In the meantime, we again request that NERSA only file the record in a redacted form until such time that all the parties are able to agree on a confidentiality regime. If the applicants believe that this is not in accordance with *inter alia* rule 53 or PAJA then it is open to them to pursue their rights in terms of those provisions although our view is that the regimes proposed achieve an appropriate middle ground.

A draft of the letter we will be sending to the DJP is attached with changes in track. We believe it properly represents the parties' respective positions but should there be any further objections then those can be raised with the DJP at the appropriate time.

Tinyiko Ndlovu
Lawyer
for Present Nations

D: +27 10 453 4587 M: +27 66 246 8368 E: 294587

Winner - 'Law Firm of the Year' at the Legal Business Awards 2021

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From: Andri Jennings <andri@inc.co.za>

Sent: Wednesday, 15 June 2022 13:01

To: Kgamedl <kgamedl@pin-attorneys.co.za>

Cc: prince@pin-attorneys.co.za; dino@pin-attorneys.co.za

<Sarah.Burford@pin-sentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pin-sentmasons.com>; Johannesburg.Litigation@dentons.com; Tinyiko Ndlovu <Tinyiko.Ndlovu@pin-sentmasons.com>

Subject: [EXTERNAL] RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

Good day,

Apologies, the paragraph is paragraph 13 of our letter.

Kind Regards/Vriendelike Groete,
Andri Jennings
Director/Direkteur



KINDLY NOTE: We will never change or amend our trust banking details via e-mail or by any other electronic means. Please contact our office for formal verification should you receive any correspondence or communication.

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From: Andri Jennings

Sent: 15 June 2022 12:49 PM

To: Kgamedl <kgamedl@pin-attorneys.co.za>

Cc: prince@pin-attorneys.co.za; dino@pin-attorneys.co.za; Irene Plenaar <Irene.Plenaar@inc.co.za>; Rob Morson (Projects) <Rob.Morson@pin-sentmasons.com>; Jason Smit <Jason.Smit@pin-sentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pin-sentmasons.com>; Sarah Burford <Sarah.Burford@pin-sentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pin-sentmasons.com>; Johannesburg.Litigation@dentons.com; Tinyiko Ndlovu <Tinyiko.Ndlovu@pin-sentmasons.com>

Subject: RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

Good day,

We refer to the abovementioned matter as well as your email dated 15 June 2022 below has reference.

27

CONFIDENTIALITY UNDERTAKING

in respect of

**THE GREEN CONNECTION NPC ("GREEN CONNECTION") v THE NATIONAL ENERGY
REGULATOR OF SOUTH AFRICA AND 6 OTHERS IN THE HIGH COURT OF SOUTH
AFRICA, GAUTENG DIVISION, PRETORIA UNDER CASE NO: 23339/2022 ("the Review
Proceedings")**

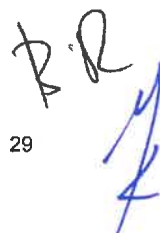
WHEREAS:

Green Connection has instituted the Review Proceedings in the High Court of South Africa, Gauteng Division, Pretoria and as agreed to by all the parties, the first respondent, namely the National Energy Regulator of South Africa, shall file a confidential and non-confidential version of the Record in terms of Rule 53 of the Uniform Rules of Court. The Confidential Record contains the information of the Third to Fifth Respondents (collectively referred to as Karpowership) which is of a confidential, commercially sensitive and/or proprietary nature and to which only the legal representatives and/or independent experts of the parties to the Review Proceedings will have access, subject to the terms and conditions set out in this undertaking.

THEREFORE, THE PERSON REFERRED TO IN CLAUSE 2 AGREES AS FOLLOWS:

1. In this undertaking, the following expressions shall bear the following meanings and related expressions shall bear corresponding meanings:
 - 1.1. **"Confidential Information"** means the information contained in the Confidential Record.
 - 1.2. **"Confidential Record"** means the version of the Record filed by the first respondent in terms of Rule 53 of the Uniform Rules of Court and identified as being the confidential Record.

- 1.3. **“Karpowership”** means the parties cited as the Third to Fifth Respondent in the Review Proceedings, namely, Karpowership SA Coega (RF) (Pty) Ltd, Karpowership SA Saldanha Bay (RF) (Pty) Ltd, and Karpowership SA Richards bay (RF) (Pty) Ltd.
- 1.4. **“Non-confidential Record”** means the version of the Record filed by the first respondent in terms of Rule 53 of the Uniform Rules of Court and identified as being the Non-confidential Record.
2. I _____ hereby confirm that I am _____ and I am an _____ engaged by _____ in respect of the Review Proceedings.
- 2.1. In order to be provided with a copy of, or otherwise granted access to, the Confidential Record, I agree and acknowledge that I am required to provide the undertakings contained herein.
- 2.2. I undertake to treat the Confidential Information as strictly confidential and to use such Confidential Information solely for purposes of the Review Proceedings. In this regard, I undertake to apply the same standard of care to the Confidential Information that applies to my own proprietary, commercially sensitive, secret, or confidential information, and agree and undertake to store and handle the Confidential Information in such a way as to prevent any unauthorised disclosure thereof.
- 2.3. I further undertake that I will not divulge the Confidential Information, in whole or in part or in any manner or form, or permit the Confidential information to be divulged, in whole or in part or in manner or form, to any person other than:
- 2.3.1. with the prior written consent of Karpowership and in accordance with the terms of that consent; or
- 2.3.2. in accordance with an order or direction issued by the presiding judge in the Review Proceedings.



2.4. I undertake that should I identify any document and/or information of a confidential, commercially sensitive and/or propriety nature in the Non-confidential Record, that should otherwise be properly regarded as Confidential Information, then I shall immediately notify the first respondent of the existence of such information in the Non-confidential Record.

2.4.1. The first respondent shall circulate a list of any document(s) and/or information of which they have been notified in terms of clause 2.4 to the parties to the Review Proceedings

2.4.2. Notwithstanding the presence of such information in the Non-confidential Record, any information identified in clause 2.4 is to be regarded as if it were Confidential Information.

2.5. I further undertake that, upon completion of the Review Proceedings (including any appeals), I will –

2.5.1. destroy any copies and/or replications of the Confidential Information in my possession; and

2.5.2. destroy all memoranda, notes, and other materials in respect of the Confidential Information prepared by me or any person to whom I have disclosed the Confidential Information pursuant to clause 2.3.

2.6. Certain of the provisions of this confidentially undertaking may contain stipulations for the benefit of a third party (*stipulatio alteri*). Such third party (whether a party to the Review Proceedings or otherwise) may accept the benefits of any such stipulation at any time on written notice to me.

Date

Place

Signature



CONFIDENTIALITY UNDERTAKING

in respect of

**ORGANISATION UNDOING TAX ABUSE NPC ("OUTA") v THE NATIONAL ENERGY
REGULATOR OF SOUTH AFRICA AND 7 OTHERS IN THE HIGH COURT OF SOUTH
AFRICA, GAUTENG DIVISION, PRETORIA UNDER CASE NO: 23017/2022 ("the Review
Proceedings")**

WHEREAS:

OUTA has instituted the Review Proceedings in the High Court of South Africa, Gauteng Division, Pretoria and as agreed to by all the parties, the first respondent, namely the National Energy Regulator of South Africa, shall file a confidential and non-confidential version of the Record in terms of Rule 53 of the Uniform Rules of Court. The Confidential Record contains the information of the Second to Fifth Respondents (collectively referred to as Karpowership) which is of a confidential, commercially sensitive and/or proprietary nature and to which only the legal representatives and/or independent experts of the parties to the Review Proceedings will have access, subject to the terms and conditions set out in this undertaking.

THEREFORE, THE PERSON REFERRED TO IN CLAUSE 2 AGREES AS FOLLOWS:

1. In this undertaking, the following expressions shall bear the following meanings and related expressions shall bear corresponding meanings:
 - 1.1. **"Confidential Information"** means the information contained in the Confidential Record.
 - 1.2. **"Confidential Record"** means the version of the Record filed by the first respondent in terms of Rule 53 of the Uniform Rules of Court and identified as being the confidential Record.
 - 1.3. **"Karpowership"** means the parties cited as the Second to Fifth Respondent in the Review Proceedings, namely, Karpowership SA Coega (RF) (Pty) Ltd, Karpowership

SA Saldanha Bay (RF) (Pty) Ltd, Karpowership SA Richards bay (RF) (Pty) Ltd and, Karpowership SA (Pty) Ltd.

1.4. **“Non-confidential Record”** means the version of the Record filed by the first respondent in terms of Rule 53 of the Uniform Rules of Court and identified as being the Non-confidential Record.

2. I _____ hereby confirm that I am _____ and I am an _____ engaged by _____ in respect of the Review Proceedings.

2.1. In order to be provided with a copy of, or otherwise granted access to, the Confidential Record, I agree and acknowledge that I am required to provide the undertakings contained herein.

2.2. I undertake to treat the Confidential Information as strictly confidential and to use such Confidential Information solely for purposes of the Review Proceedings. In this regard, I undertake to apply the same standard of care to the Confidential Information that applies to my own proprietary, commercially sensitive, secret, or confidential information, and agree and undertake to store and handle the Confidential Information in such a way as to prevent any unauthorised disclosure thereof.

2.3. I further undertake that I will not divulge the Confidential Information, in whole or in part or in any manner or form, or permit the Confidential information to be divulged, in whole or in part or in manner or form, to any person other than:

2.3.1. with the prior written consent of Karpowership and in accordance with the terms of that consent; or

2.3.2. in accordance with an order or direction issued by the presiding judge in the Review Proceedings.

2.4. I undertake that should I identify any document and/or information of a confidential, commercially sensitive and/or propriety nature in the Non-confidential Record, that

should otherwise be properly regarded as Confidential Information, then I shall immediately notify the first respondent of the existence of such information in the Non-confidential Record.

2.4.1. The first respondent shall circulate a list of any document(s) and/or information of which they have been notified in terms of clause 2.4 to the parties to the Review Proceedings

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2.5. I further undertake that, upon completion of the Review Proceedings (including any appeals), I will –

2.5.1. destroy any copies and/or replications of the Confidential Information in my possession; and

2.5.2. destroy all memoranda, notes, and other materials in respect of the Confidential Information prepared by me or any person to whom I have disclosed the Confidential Information pursuant to clause 2.3.

2.6. Certain of the provisions of this confidentially undertaking may contain stipulations for the benefit of a third party (*stipulatio alteri*). Such third party (whether a party to the Review Proceedings or otherwise) may accept the benefits of any such stipulation at any time on written notice to me.

Date

Place

Signature



BY E-MAIL

Deputy Judge President
The Honourable Mr Justice Ledwaba
OMolopa@judiciary.org.za
AMbelani@judiciary.org.za

Our Ref:687262.1 \691335.07000

DDI +27104934587

E: Jason.Smit@pinsentmasons.com
Andrew.Fawcett@pinsentmasons.com

Date TBD

DIRECTORS
Junaid Banoobhai
Claire Barclay
Rob Morson
Deidre Simaan
Jurg van Dyk
Daniella Zussa
Jason Stuart Smit
Christopher Bernard Green

Dear Honourable Deputy Judge President Ledwaba

ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS (CASE NO: 23017/2022)

THE GREEN CONNECTION NPC // NATIONAL ENERGY REGULATOR OF SOUTH AFRICA & 5 OTHERS (CASE NO: 23339/22)

1. INTRODUCTION

- 1.1 We address you on behalf of our client, Karpowership SA (Pty) Ltd and its subsidiaries namely, Karpowership SA Saldanha Bay (RF) Proprietary Limited, Karpowership SA Coega (RF) Proprietary Limited and Karpowership SA Richard's Bay (RF) Proprietary Limited (collectively referred to as "**Karpowership**") in relation to the above matters.
- 1.2 Two entities, namely, the Organisation Undoing Tax Abuse NPC ("**OUTA**") (case no. 23017/2022) and Green Connection NPC ("**Green Connection**") (case no. 23339/22) have separately instituted review proceedings against the National Energy Regulator of South Africa ("**NERSA**") with Karpowership cited as a respondent in each of the applications.
- 1.3 The purpose of this correspondence is to humbly seek your Lordship's assistance in having these reviews case managed with the objective of having them heard jointly and on an expedited basis. A draft of this letter was previously shared with the other parties for their consideration. Both OUTA and GC provided their responses while NERSA has not yet done so. We attach the received responses as "**Annexure A – Letter from Chennells Albertyn dated 13 June 2022**" and "**Annexure B – Letter from Jennings Inc dated 13 June 2022**".
- 1.4 For your Lordship's convenience we highlight that both GC and OUTA agree that:

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T +27 10 493 4600 F +27 10 493 4611

Pinsent Masons South Africa Incorporated is regulated by the Northern Provinces Law Society. It is an affiliated entity of Pinsent Masons LLP, which is a limited liability partnership registered in England & Wales (registered number OC333653) authorised and regulated by the Solicitors Regulation Authority and the appropriate body in the other jurisdictions which it operates.

For a full list of the jurisdictions where we operate, see www.pinsentmasons.com





1.4.1 The reviews be heard jointly and on an expedited basis; and

1.4.2 That a case management meeting be convened with your Lordship.

1.5 Both GC and OUTA have, however, indicated that they do not agree with the remainder of the contents of this letter.

2. **BACKGROUND**

2.1 Karpowership was incorporated for the primary purpose of bidding for (and implementing) projects under the Department of Mineral Resources and Energy's ("DMRE") Risk Mitigation IPP Procurement Programme ("RMIPPPP") by way of three wholly owned and ringfenced project companies which have been established.

2.2 In brief, the RMIPPPP is a programme by the DMRE which is intended to fill the country's critical short-term energy supply gap. The ultimate objective of the RMIPPPP is to alleviate the country's current electricity supply constraints (which lead to load-shedding) and to reduce extensive utilisation of the diesel-based peaking electrical generators.

2.3 The RMIPPPP was designed to procure 2000 MWs of new generation capacity from different types of dispatchable power projects with the goal of speedily connecting to the grid and providing South Africans with much needed electricity.

2.4 The RMIPPPP's request for proposals was published during August 2020 and, on 18 March 2021, Karpowership, and nine other entities, were appointed as preferred bidders by the Minister of the DMRE.

2.5 Karpowership was awarded preferred bidder status under the RMIPPPP in respect of three power generation facilities at the Port of Ngqura/Coega, Saldanha Bay and Richard's Bay, each comprising a floating facility or "Powership" which will be stationed offshore to eventually feed electricity into the national power grid.

2.6 After Karpowership was nominated as a preferred bidder under the RMIPPPP, it applied for and was granted electricity generation licences to operate all three generation facilities by NERSA between August and September 2021.

2.7 As your Lordship will note from annexure B, OUTA has requested that we highlight that Karpowership's application for the environmental authorisation of the three generation facilities has been rejected by the Department of Forestry, Fisheries, and the Environment ("DFFE") (such authorisations are one the numerous requirements for the implementation RMIPPPP). The relevance the DFFE's decision is an issue for GC and OUTA to address, save to mention that this information is public knowledge and Karpowership has already lodged its appeal of the decision.

3. **JOINT HEARING AND CASE MANAGEMENT**

3.1 On 25 April 2022, Green Connection instituted a review application for an order reviewing and setting aside the decisions of NERSA to approve the granting of the three electricity generation licences to Karpowership. Green Connection contends that NERSA's decisions fall to be set aside on several the grounds set out in section 6(2) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). In addition, Green Connection alleges that the decisions were procedurally unfair and irrational being that NERSA failed to comply with s10(2)(g) of the Electricity Regulation Act 4 of 2006



("ERA") and NERSA failed to discharge its obligation to take into account certain environmental considerations.

- 3.2 Comparatively, on 26 April 2022, OUTA instituted a review application in terms of section 6 of PAJA seeking to set aside NERSA's decisions to grant the generation licenses to Karpowership. OUTA's review is similarly grounded on the contention that the decision was allegedly irrational, unreasonable and procedurally unfair as it infringed upon sections 2 and 10(2)(e) of ERA in that the licences were granted in the absence of appropriate environmental authorisations being granted to Karpowership.
- 3.3 Karpowership and NERSA have opposed both applications while Eskom (the Sixth and Eighth Respondent in the respective proceedings) has delivered notices to abide.
- 3.4 Taking the above into consideration, it is evident that, despite approaching the court separately, Green Connection and OUTA are seeking the same substantive relief against the same administrative decision and rely on substantially similar grounds. In fact, Green Connection concedes in its founding affidavit (at paragraph 166) that its initial intention was to either join OUTA's application or apply to intervene as an *amicus curiae*.
- 3.5 By our calculation, NERSA's record of decision became due on 18 and 19 May 2022 however, we have since been informed that NERSA has agreed with both OUTA and GC to deliver the record during the week ending 10 June 2022 and that these agreements were reached before our client opposed the respective applications.
- 3.6 We have proposed that the record be delivered on redacted basis in the first instance, subject to concluding written confidentiality undertakings. As at the date of this letter, discussions on the record and the confidentiality regime remain ongoing.
- 3.7 We think such a regime is necessary to guard our client's rights as some of the information in question, in its view, qualifies for protection under PAIA, POPIA and the provisions of the RMIPPPP. Should your Lordship be inclined to meet with the parties and agreement on the record or the confidentiality regime has not been reached then our client proposes that this issue be direct by you.
- 3.8 In any event, given the factual, procedural, and legal overlaps between the review applications, Karpowership believes that it would be in the interests of all parties if these two matters were to be heard together by the same judge. This approach will limit costs for all the parties and prevent a duplication of proceedings. This will also enable the reviews to be heard efficiently and with minimal impact on the court's time and resources.
- 3.9 Taking the above onto account our Karpowership submits this written request for judicial case management in terms of Uniform Rule 37A(1)(b) as it believes it would be both advantageous and expedient to have the parties collectively agree to applicable timelines under your Lordship's direction.

4. CONCLUSION

- 4.1 The expeditious hearing of these matters is not only preferable but is also imperative given that the decision in question relates to a broader issue which is urgent and of national importance. South Africa's electricity supply is under severe pressure and the RMIPPPP has been specifically designed to address this.



- 4.2 The RMIPPPP has experienced significant disruptions already and any delay to the hearing of these matters impacts, not only the parties, but the public at large. It is for that reason that our client believes it would be preferable to have both reviews heard on a preferential basis.
- 4.3 We, therefore, respectfully request that a case management meeting be held with your Lordship for this proposal to be discussed more fully and, hopefully, to confirm a hearing, special allocation, and an expedited timeline for the review applications.
- 4.4 Should the parties disagree with any other matter discussed in this letter then we assume it will be brought to your Lordship's attention at the appropriate time.
- 4.5 We are, nevertheless, grateful for your Lordship's time and consideration and will avail ourselves for any meetings which you may consider necessary.

Yours faithfully

Pinsent Masons South Africa Inc (registered no.F17331)

This letter is sent electronically and so is unsigned

Enclosures:

1. Annexure A – Letter from Chennells Albertyn 13 June 2022
2. Annexure B – Letter from Jennings Inc 13 June 2022

Archived: Monday, 13 March 2023 17:50:02

From: Tinyiko Ndlovu

Mail received time: Mon, 20 Jun 2022 08:40:44

Sent: Mon, 20 Jun 2022 07:40:40

To: kganedi@pin-attorneys.co.za; Andri Jennings' Sarah Burford sarol@chennellsalbertyn.co.za; fiona@chennellsalbertyn.co.za; kganedi@pin-attorneys.co.za

Cc: prince@pin-attorneys.co.za; dino@pin-attorneys.co.za; Irene Pienaar' Rob Morson (Projects) Jason Smit Andrew Fawcett Nombasa Mazwai Johannesburg Litigation@dentons.com; prince@pin-attorneys.co.za; dino@pin-attorneys.co.za

Subject: RE: [EXTERNAL] ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015 [PM-SA FID40785]

Importance: Normal

Sensitivity: None

Attachments:

PM1 - Honourable Deputy Judge President - 2022 06 20 (amended)(687262.15).docx;

38

AA16.1

Dear All

Following receipt of the non-confidential record, we confirm that we will be sending the attached version of the letter to the DJP this morning (amendments are in track).

As stated in our email last week, we believe that the letter fairly explains the position of all the parties however to the extent that there are any other objections to the content of the letter then these can be addressed before the DJP.

We await your comments regarding the proposed confidentiality undertakings.

Thank you.

Tinyiko Ndlovu
Lawyer
for Pinset Misona

D: +27 10 593 4582 M: +27 66 246 8388 I: 294587

Winner - 'Law Firm of the Year' at the Legal Business Awards 2021

Pinset Misona respects the privacy of its clients and will not disclose any information to third parties without your prior written consent.

From: kganedi@pin-attorneys.co.za <kganedi@pin-attorneys.co.za>

Sent: Friday, 17 June 2022 15:39

To: 'Andri Jennings' <andri@inc.co.za>; Sarah Burford <Sarah.Burford@pinsentmasons.com>; Tinyiko Ndlovu <tinyiko.ndlovu@pinsentmasons.com>; carol@chennellsalbertyn.co.za; fiona@chennellsalbertyn.co.za

Cc: prince@pin-attorneys.co.za; dino@pin-attorneys.co.za; 'Irene Pienaar' <irene@inc.co.za>; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Johannesburg Litigation@dentons.com

Subject: [EXTERNAL] RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

Part 10

Kind Regards,

Kganedi Mashabathaka

PM
ATTORNEYS NOTARIES AND CONVEYANCERS

Tel: 010 224 0608

Direct line: 010 224 0643

Fax: 086 695 0132

P.O. Box 33884 Braamfontein 2017

Building 2 Thornhill Office Park,

94 Bekker Street, Vorna Valley, Midrand 1685.



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From: Andri Jennings <andri@inc.co.za>

Sent: Wednesday, 15 June 2022 3:27 PM

To: Sarah Burford <Sarah.Burford@pinsentmasons.com>; Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>; Kganedi <kganedi@pin-attorneys.co.za>; carol@chennellsalbertyn.co.za; fiona@chennellsalbertyn.co.za

Cc: prince@pin-attorneys.co.za; dino@pin-attorneys.co.za; Irene Pienaar <irene@inc.co.za>; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Johannesburg Litigation@dentons.com

Subject: RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

38

BY E-MAIL

Deputy Judge President
The Honourable Mr Justice Ledwaba
OMolopa@judiciary.org.za
AMbelani@judiciary.org.za

Our Ref:687262.16 \691335.07000

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E: Jason.Smit@pinsentmasons.com
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20 June 2022

DIRECTORS
Junaid Bancobhai
Claire Barclay
Rob Morson
Deidre Simaan
Jurg van Dyk
Daniella Zussa
Jason Stuart Smit
Christopher Bernard Green

Dear Honourable Deputy Judge President Ledwaba

ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS (CASE NO: 23017/2022)

THE GREEN CONNECTION NPC // NATIONAL ENERGY REGULATOR OF SOUTH AFRICA & 5 OTHERS (CASE NO: 23339/22)

1. INTRODUCTION

- 1.1 We address you on behalf of our client, Karpowership SA (Pty) Ltd and its subsidiaries namely, Karpowership SA Saldanha Bay (RF) Proprietary Limited, Karpowership SA Coega (RF) Proprietary Limited and Karpowership SA Richard's Bay (RF) Proprietary Limited (collectively referred to as "**Karpowership**") in relation to the above matters.
- 1.2 Two entities, namely, the Organisation Undoing Tax Abuse NPC ("**OUTA**") (case no. 23017/2022) and Green Connection NPC ("**Green Connection**") (case no. 23339/22) have separately instituted review proceedings against the National Energy Regulator of South Africa ("**NERSA**") with Karpowership cited as a respondent in each of the applications.
- 1.3 The purpose of this correspondence is to humbly seek your Lordship's assistance in having these reviews case managed with the objective of having them heard jointly and on an expedited basis. A draft of this letter was previously shared with the other parties for their consideration.
- 1.4 The extent to which Green Connection and OUTA agree / disagree with the contents of this letter is set out in their respective responses. Self-evidently, they have reserved the right to address any areas of disagreement with your Lordship and our Client has no objection to this. We attach the received responses as "**Annexure A – Letter from**

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For a full list of the jurisdictions where we operate, see www.pinsentmasons.com





Chennells Albertyn dated 10 June 2022, **“Annexure B – Letter from Jennings Inc dated 13 June 2022”** and **“Annexure C – Letter from Jennings Inc dated 20 June 2022”**.

2. BACKGROUND

- 2.1 Karpowership was incorporated for the primary purpose of bidding for (and implementing) projects under the Department of Mineral Resources and Energy's (**“DMRE”**) Risk Mitigation IPP Procurement Programme (**“RMIPPPP”**) by way of three wholly owned and ringfenced project companies which have been established.
- 2.2 In brief, the RMIPPPP is a programme by the DMRE which is intended to fill the country's critical short-term energy supply gap. The ultimate objective of the RMIPPPP is to alleviate the country's current electricity supply constraints (which lead to load-shedding) and to reduce extensive utilisation of the diesel-based peaking electrical generators.
- 2.3 The RMIPPPP was designed to procure 2000 MWs of new generation capacity from different types of dispatchable power projects with the goal of speedily connecting to the grid and providing South Africans with much needed electricity.
- 2.4 The RMIPPPP's request for proposals was published during August 2020 and, on 18 March 2021, Karpowership, and nine other entities, were appointed as preferred bidders by the Minister of the DMRE.
- 2.5 Karpowership was awarded preferred bidder status under the RMIPPPP in respect of three power generation facilities at the Port of Ngqura/Coega, Saldanha Bay and Richard's Bay, each comprising a floating facility or “Powership” which will be stationed offshore to eventually feed electricity into the national power grid.
- 2.6 After Karpowership was nominated as a preferred bidder under the RMIPPPP, it applied for and was granted electricity generation licences to operate all three generation facilities by NERSA between August and September 2021.
- 2.7 As your Lordship will note from annexure B, OUTA has requested that we highlight that Karpowership's application for the environmental authorisation of the three generation facilities has been rejected by the Department of Forestry, Fisheries, and the Environment (**“DFFE”**) (such authorisations are one of the numerous requirements for the implementation of the RMIPPPP). The relevance of the DFFE's decision is an issue for Green Connection and OUTA to establish, save to mention that this information is public knowledge and Karpowership has already lodged its appeal of the decision.

3. JOINT HEARING AND CASE MANAGEMENT

- 3.1 On 25 April 2022, Green Connection instituted a review application for an order reviewing and setting aside the decisions of NERSA to approve the granting of the three electricity generation licences to Karpowership. Green Connection contends that NERSA's decisions fall to be set aside on several the grounds set out in section 6(2) of the Promotion of Administrative Justice Act 3 of 2000 (**“PAJA”**). In addition, Green Connection alleges that the decisions were procedurally unfair and irrational being that NERSA failed to comply with s10(2)(g) of the Electricity Regulation Act 4 of 2006 (**“ERA”**) and NERSA failed to discharge its obligation to take into account certain environmental considerations.



- 3.2 Comparatively, on 26 April 2022, OUTA instituted a review application in terms of section 6 of PAJA seeking to set aside NERSA's decisions to grant the generation licenses to Karpowership. OUTA's review is similarly grounded on the contention that the decision was allegedly irrational, unreasonable and procedurally unfair as it infringed upon sections 2 and 10(2)(e) of ERA in that the licences were granted in the absence of appropriate environmental authorisations being granted to Karpowership.
- 3.3 Karpowership and NERSA have opposed both applications while Eskom (the Sixth and Eighth Respondent in the respective proceedings) has delivered notices to abide.
- 3.4 Taking the above into consideration, it is evident that, despite approaching the court separately, Green Connection and OUTA are seeking the same substantive relief against the same administrative decision and rely on substantially similar grounds. In fact, Green Connection concedes in its founding affidavit (at paragraph 166) that its initial intention was to either join OUTA's application or apply to intervene as an *amicus curiae*.
- 3.5 NERSA delivered a redacted version of the Rule 53 Record on 17 June 2022. As at the date of this letter, discussions on a confidential record and a suitable confidentiality regime remain ongoing.
- 3.6 We think such a regime is necessary to guard our client's rights as some of the information in question, in its view, qualifies for protection under PAIA, POPIA and the provisions of the RMIPPPP. Should your Lordship be inclined to meet with the parties and agreement on the Record or the confidentiality regime has not been reached then our client proposes that this issue be directed by you.
- 3.7 In any event, given the factual, procedural, and legal overlaps between the review applications, Karpowership believes that it would be in the interests of all parties if these two matters were to be heard together by the same judge. This approach will limit costs for all the parties and prevent a duplication of proceedings. This will also enable the reviews to be heard efficiently and with minimal impact on the court's time and resources.
- 3.8 Taking the above onto account Karpowership submits this written request for judicial case management in terms of Uniform Rule 37A(1)(b) as it believes it would be both advantageous and expedient to have the parties collectively agree to applicable timelines under your Lordship's direction.
4. **CONCLUSION**
- 4.1 The expeditious hearing of these matters is not only preferable but is also imperative given that the decision in question relates to a broader issue which is urgent and of national importance. South Africa's electricity supply is under severe pressure and the RMIPPPP has been specifically designed to address this.
- 4.2 The RMIPPPP has experienced significant disruptions already and any delay to the hearing of these matters impacts, not only the parties, but the public at large. It is for that reason that our client believes it would be preferable to have both reviews heard on a preferential basis.
- 4.3 We, therefore, respectfully request that a case management meeting be held with your Lordship for this proposal to be discussed more fully and, hopefully, to confirm a hearing, special allocation, and an expedited timeline for the review applications.

B.R
1/2



- 4.4 Should the parties disagree with any other matter discussed in this letter then we assume it will be brought to your Lordship's attention at the appropriate time.
- 4.5 We are, nevertheless, grateful for your Lordship's time and consideration and will avail ourselves for any meetings which you may consider necessary.

Yours faithfully

Pinsent Masons South Africa Inc (registered no.F17331)

This letter is sent electronically and so is unsigned

Enclosures:

1. Annexure A – Letter from Chennells Albertyn 10 June 2022
2. Annexure B – Letter from Jennings Inc 13 June 2022
3. Annexure C – Letter from Jennings Inc dated 20 June 2022

B.R.
y
K

Archived: Monday, 13 March 2023 17:50:28
From: **Andri Jennings**
Sent: Monday, 20 June 2022 09:44:12
To: **Tinyiko Ndlovu** <kganedi@pin-attorneys.co.za> Sarah Burford <sarah.burford@pinentmasons.com> fiona@chenellslibertyn.co.za
Cc: prince@pin-attorneys.co.za <dineo@pin-attorneys.co.za> Irene Pienaar <Rob.Morson@pinentmasons.com> Jason Smit <Andrew.Fawcett@pinentmasons.com> Nombasa Mazwai <Johannesburg.Litigation@dentons.com>
Subject: RE: [EXTERNAL] ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015 [PM-SA.FID40785]
Importance: Normal
Sensitivity: None

Good day.

Please note that we do not agree with the content of the letter with the tracked changes.

Our formal letter will follow shortly.

Kind Regards/Yrendelike Groete,
Andri Jennings
Director/Direkteur



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From: Tinyiko Ndlovu <Tinyiko.Ndlovu@pinentmasons.com>
Sent: 20 June 2022 09:41 AM
To: kganedi@pin-attorneys.co.za; Andri Jennings <andri@jinc.co.za>; Sarah Burford <sarah.burford@pinentmasons.com>; carol@chenellslibertyn.co.za; fiona@chenellslibertyn.co.za
Cc: prince@pin-attorneys.co.za; dineo@pin-attorneys.co.za; Irene Pienaar <irene@jinc.co.za>; Rob Morson <Rob.Morson@pinentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinentmasons.com>; Johannesburg.Litigation@dentons.com
Subject: RE: [EXTERNAL] ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015 [PM-SA.FID40785]

Dear All

Following receipt of the non-confidential record, we confirm that we will be sending the attached version of the letter to the D.P this morning (amendments are in track).
As stated in our email last week, we believe that the letter fairly explains the position of all the parties however to the extent that there are any other objections to the content of the letter then these can be addressed before the D.P.
We await your comments regarding the proposed confidentiality undertakings.

Thank you.
Tinyiko Ndlovu
Lawyer
for Pinsent Masons

ID - 527.10.493.6987 MA - 527.66.246.8568 T - 294587
Winner - 'Law Firm of the Year' at the Legal Business Awards 2021

From: kganedi@pin-attorneys.co.za <kganedi@pin-attorneys.co.za>
Sent: Friday, 17 June 2022 15:39
To: Andri Jennings <andri@jinc.co.za>; Sarah Burford <sarah.burford@pinentmasons.com>; Tinyiko Ndlovu <Tinyiko.Ndlovu@pinentmasons.com>; carol@chenellslibertyn.co.za; fiona@chenellslibertyn.co.za
Cc: prince@pin-attorneys.co.za; dineo@pin-attorneys.co.za; Irene Pienaar <irene@jinc.co.za>; Rob Morson <Rob.Morson@pinentmasons.com>; Jason Smit <Jason.Smit@pinentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinentmasons.com>; Johannesburg.Litigation@dentons.com
Subject: [EXTERNAL] RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

Part 10
Kind Regards,
Kganedi Mashabathaka

Archived: Monday, 13 March 2023 17:50:45
From: Carol van der Vyver<[Chennells Albertyn]
Mail received time: Mon, 20 Jun 2022 08:00:09
Sent: Monday, 20 June 2022 10:00:09
To: Tinyiko Ndlovu<[pin-attorneys.co.za 'Andri Jennings' Sarah Burford fiona@chennellsalbertyn.co.za]
Cc: prince@pm-attorneys.co.za; dino@pm-attorneys.co.za; Irene Pienaar<[Rob Morison (Projects) Jason Smit Andrew Fawcett Nombasa Mazwai Johannesburg Litigation@dentons.com]
Subject: RE: [EXTERNAL] ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015 [PM-SA.FID40785]
Importance: Normal
Sensitivity: None

AA17.2

Dear Sirs

We acknowledge receipt of your email of even date.

We wish to place on record that we are not in agreement with the content of the letter which you intend to send to the DIP nor the track changes. A detailed letter will follow later.

Kind regards
Fiona Bester

Sent by:
Carol van der Vyver
Secretary to Fiona Bester (Senior Partner)

CHENNELLS ALBERTYN
Attorneys and Conveyancers

44 Alexander Street, Stellenbosch, 7600
PO Box 1022, Stellenbosch, 7599
Tel: 021 883 3189 Fax: 021 883 8910
Email: carol@chennellsalbertyn.co.za

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Rondebosch Office
18A Greenwold Grove, Station Road, Rondebosch
Tel: 021 685 6354 Fax: 021 685 0710

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From: Tinyiko Ndlovu [mailto:Tinyiko.Ndlovu@pinseintmasons.com]

Sent: Monday, June 20, 2022 9:41 AM

To: kigane@pm-attorneys.co.za; 'Andri Jennings' <andri@jnc.co.za>; Sarah Burford <Sarah.Burford@pinseintmasons.com>; carol@chennellsalbertyn.co.za; fiona@chennellsalbertyn.co.za

Cc: prince@pm-attorneys.co.za; dino@pm-attorneys.co.za; 'Irene Pienaar' <irene@jnc.co.za>; Rob Morison (Projects) <Rob.Morison@pinseintmasons.com>; Jason Smit <jason.smit@pinseintmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinseintmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinseintmasons.com>; Johannesburg Litigation@dentons.com

Subject: RE: [EXTERNAL] ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015 [PM-SA.FID40785]

Dear All

Following receipt of the non-confidential record, we confirm that we will be sending the attached version of the letter to the DIP this morning (amendments are in track).

As stated in our email last week, we believe that the letter fairly explains the position of all the parties however to the extent that there are any other objections to the content of the letter then these can be addressed before the DJP.

We await your comments regarding the proposed confidentiality undertakings.

Thank you.

Tinyiko Ndlovu
Lawyer
for Pinseint Masons

D: +27 10 493 4582 M: +27 66 246 8588 I: 24582

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Pinseint Masons respects your privacy and will only use your personal information in the way you have agreed to us doing so. Please see our privacy policy for more information.

From: kigane@pm-attorneys.co.za <kigane@pm-attorneys.co.za>

Sent: Friday, 17 June 2022 15:39

To: Andri Jennings <andri@jnc.co.za>; Sarah Burford <Sarah.Burford@pinseintmasons.com>; Tinyiko Ndlovu <Tinyiko.Ndlovu@pinseintmasons.com>; carol@chennellsalbertyn.co.za; fiona@chennellsalbertyn.co.za

Cc: prince@pm-attorneys.co.za; dino@pm-attorneys.co.za; 'Irene Pienaar' <irene@jnc.co.za>; Rob Morison (Projects) <Rob.Morison@pinseintmasons.com>; Jason Smit <jason.smit@pinseintmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinseintmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinseintmasons.com>; Johannesburg Litigation@dentons.com

Subject: [EXTERNAL] RE: ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015

YOUR REFERENCE:

DATE: 20 June 2022

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

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: UNKNOWN)

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 your email of 15 June 2022 and the attached draft documents.
2. It is unclear as to what is meant by the sentence contained in the second paragraph of your email "...the agreement on this regime does not require our client to provide a list in the form requested by the applicants as it is evident from their own papers what the information relates to." (Emphasis added)
3. We do not know what part of our client's papers you are referring to and cannot reasonably respond to such vague allegations. According to us nothing of this nature (that parts of the record are/should be confidential) is evident from our client's papers. Kindly therefore clarify what part of our client's application and what

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Reg No: 2016/065399/21 | VAT No: 4660291974

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

Cindy Pestano (LLB - UNISA) Conveyancer | Suléne von Rensburg (BA - LLB) Associate Attorney, Notary and Conveyancer
Malizzo van der Linde - Candidate Legal Practitioner | Ian Jennings - Candidate Legal Practitioner

office@jinc.co.za

Head Office: 149 Anderson Street, Brooklyn, Pretoria | O: 012 110 4442

18 Ross Street, Cullinan | O: 012 110 4442

222 Smit Street, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572

21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 233 8770

B.R.
43

information contained therein you are referring to in order for us to take proper instructions and formulate a response.

4. We further refer to paragraph 1.4.1 of your track-changed draft letter intended for the attention of the DJP. It is not correct that our client agreed to the matter being heard on an expedited basis. In paragraph 18 of our letter dated 13 June 2022 writer placed the following in record:

"18. We therefore deny that the allegations contained in your letter constitute a proper basis for an urgent or expedited hearing in this matter."

5. We did, however, indicate in paragraph 19 of our letter of 13 June 2022 that our client would have no objection to a special allocation being requested due to the anticipated volume of the papers.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,
Andri Jennings
Director

B.12
4/

Archived: Tuesday, 14 March 2023 11:34:03

From: Tivako Ndlovu

Sent: Monday, 20 June 2022 10:19:49

To: Andri Jennings <andri@pin-sentmasons.com>; Sarah Burford <carol@chemnellsbertyn.co.za>; Fiona@chemnellsbertyn.co.za

Cc: prince@pin-sentmasons.com; dines@pin-sentmasons.com; Irene Pienaar <irene@pin-sentmasons.com>; Jason Smit <jason@pin-sentmasons.com>; Delia Turner

Subject: RE: [EXTERNAL] ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015

Importance: Normal

Sensitivity: None

Dear Andri, Carol

Noted. We will attach your responses to the letter and bring them to the DJP's attention.

Our response regarding the record will follow.

Tivako Ndlovu

Legal Counsel

for Pin-Sent Masons

D. +27 10 453 4581 M. +27 65 246 8363 | 294587

Winner - 'Law Firm of the Year' at the Legal Business Awards 2021

Please click on the link below to view the full details of the award and to see the full list of winners.

From: Andri Jennings <andri@pin-sentmasons.com>;

Sent: Monday, 20 June 2022 10:04

To: Tivako Ndlovu <tivako@pin-sentmasons.com>; Kgandeni@pin-sentmasons.com>; Sarah Burford <carol@chemnellsbertyn.co.za>; Fiona@chemnellsbertyn.co.za

Cc: prince@pin-sentmasons.com; dines@pin-sentmasons.com; Irene Pienaar <irene@pin-sentmasons.com>; Rob Morison <rob@pin-sentmasons.com>; Jason Smit <jason@pin-sentmasons.com>; Andrew Fawcett <andrew.fawcett@pin-sentmasons.com>; Nombasa Mazwai

<nombasa.mazwai@pin-sentmasons.com>; Johannesburg Litigation@denions.com>; Delia Turner <delia@jinc.co.za>; Irene Pienaar <irene@jinc.co.za>

Subject: RE: [EXTERNAL] ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015 [PM-SA-FID40785]

Good day.

Please find attached hereto our letter as referred to below.

Kind Regards/Vriendelike Groete,

Andri Jennings

Director/Direkteur



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From: Andri Jennings

Sent: 20 June 2022 09:44 AM

To: Tivako Ndlovu <tivako@pin-sentmasons.com>; Kgandeni@pin-sentmasons.com>; Sarah Burford <carol@chemnellsbertyn.co.za>; Fiona@chemnellsbertyn.co.za

Cc: prince@pin-sentmasons.com; dines@pin-sentmasons.com; Irene Pienaar <irene@pin-sentmasons.com>; Rob Morison <rob@pin-sentmasons.com>; Jason Smit <jason@pin-sentmasons.com>; Andrew Fawcett <andrew.fawcett@pin-sentmasons.com>; Nombasa Mazwai

<nombasa.mazwai@pin-sentmasons.com>; Johannesburg Litigation@denions.com>

Subject: RE: [EXTERNAL] ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS - OUT015 [PM-SA-FID40785]

Good day.

Please note that we do not agree with the content of the letter with the tracked changes.

Our formal letter will follow shortly.

[Handwritten signature]

Archived: Monday, 13 March 2023 17:51:33

From: [Tinyiko Ndlovu](#)

Mail received time: Mon, 20 Jun 2022 10:51:30

Sent: Mon, 20 Jun 2022 09:51:26

To: OMolopa@judiciary.org.za [Avela Mbelani](#)

Cc: [Andri Jennings](mailto:Andri.Jennings@pm-attorneys.co.za) kganedi@pm-attorneys.co.za [Sarah Burford](mailto:Sarah.Burford@chennellsalbertyn.co.za) carol@chennellsalbertyn.co.za fiona@chennellsalbertyn.co.za prince@pm-attorneys.co.za dineo@pm-attorneys.co.za [Irene Pienaar Rob Morson \(Projects\)](mailto:Irene.Pienaar@Rob.Morson.Projects) [Jason Smit](mailto:Jason.Smit@Andrew.Fawcett.Nombasa.Mazwai.Litigation@dentons.com) [Andrew Fawcett](mailto:Andrew.Fawcett.Nombasa.Mazwai.Litigation@dentons.com) [Delia Turner](mailto:Delia.Turner@kganedi@pm-attorneys.co.za) kganedi@pm-attorneys.co.za prince@pm-attorneys.co.za dineo@pm-attorneys.co.za

Subject: CASE NO.: 23017 / 2022 - ORGANISATION UNDOING TAX ABUSE NPC // NERSA AND 7 OTHERS & CASE NO.: 2339 / 2022 - THE GREEN CONNECTION NPC // NERSA AND 5 OTHERS [PM-SA.FID40785]

Importance: High

Sensitivity: None

Attachments:

[20220620 - PM L Honourable Deputy Judge President.pdf](#)

Dear Sir / Madam

We address you on behalf of our clients, Karpowership SA (Pty) Ltd and its subsidiaries namely, Karpowership SA Saldanha Bay (RF) Proprietary Limited, Karpowership SA Coega (RF) Proprietary Limited and Karpowership SA Richard's Bay (RF) Proprietary Limited (collectively referred to as "**Karpowership**") in relation to the above matters in which they are cited as respondents.

Two separate review applications have been instituted by the Organization Undoing Tax Abuse NPC ("**OUTA**") and the Green Connection NPC ("**GREEN CONNECTION**") respectively seeking to *inter alia* set aside a decision by the National Energy Regulator of South Africa ("**NERSA**") to grant generation licenses to Karpowership. We have prepared the attached correspondence for the attention of the DJP humbly requesting a meeting to discuss the possible case management and joint hearing of these reviews as well as an expedited hearing date. Our summary of the reviews and the motivations for our request are set out in the letter.

Both OUTA and Green Connection have indicated that they object to our correspondence and we have attached their objections to our letter. NERSA has not raised any objections.

A hard copy of our letter will be delivered to the DJP's chambers by tomorrow.

Thank you for your consideration.

Tinyiko Ndlovu
Lawyer
for Pinsent Masons

D: [+27 10 493 4587](tel:+27104934587) M: [+27 66 246 8368](tel:+27662468368) I: [294587](tel:+27294587)

Tinyiko.Ndlovu@pinsentmasons.com
www.pinsentmasons.com www.Out-Law.com

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Pinsent Masons supports agile working, so please don't feel you need to respond to this email outside your working hours.

B-R
M
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BY E-MAIL

Deputy Judge President
The Honourable Mr Justice Ledwaba
OMolopa@judiciary.org.za
AMbelani@judiciary.org.za

Our Ref:687262.16 \691335.07000

DDI +27104934587

E: Jason.Smit@pinsentmasons.com
Andrew.Fawcett@pinsentmasons.com

20 June 2022

DIRECTORS
Junaid Banooobhai
Claire Barclay
Rob Morson
Deidre Simaan
Jurg van Dyk
Daniella Zussa
Jason Stuart Smit
Christopher Bernard Green

Dear Honourable Deputy Judge President Ledwaba

ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS (CASE NO: 23017/2022)

THE GREEN CONNECTION NPC // NATIONAL ENERGY REGULATOR OF SOUTH AFRICA & 5 OTHERS (CASE NO: 23339/22)

1. INTRODUCTION

- 1.1 We address you on behalf of our client, Karpowership SA (Pty) Ltd and its subsidiaries namely, Karpowership SA Saldanha Bay (RF) Proprietary Limited, Karpowership SA Coega (RF) Proprietary Limited and Karpowership SA Richard's Bay (RF) Proprietary Limited (collectively referred to as "**Karpowership**") in relation to the above matters.
- 1.2 Two entities, namely, the Organisation Undoing Tax Abuse NPC ("**OUTA**") (case no. 23017/2022) and Green Connection NPC ("**Green Connection**") (case no. 23339/22) have separately instituted review proceedings against the National Energy Regulator of South Africa ("**NERSA**") with Karpowership cited as a respondent in each of the applications.
- 1.3 The purpose of this correspondence is to humbly seek your Lordship's assistance in having these reviews case managed with the objective of having them heard jointly and on an expedited basis. A draft of this letter was previously shared with the other parties for their consideration.
- 1.4 The extent to which Green Connection and OUTA agree / disagree with the contents of this letter is set out in their respective responses. Self-evidently, they have reserved the right to address any areas of disagreement with your Lordship and our Client has no objection to this. We attach the received responses as "**Annexure A – Letter from**

Pinsent Masons South Africa Inc (registered no.F17331)
61 Katherine Street Sandton Gauteng Johannesburg 2196
T +27 10 493 4600 F +27 10 493 4611

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For a full list of the jurisdictions where we operate, see www.pinsentmasons.com

B.R.
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Chennells Albertyn dated 10 June 2022” , “Annexure B – Letter from Jennings Inc dated 13 June 2022” and “Annexure C – Letter from Jennings Inc dated 20 June 2022”.

2. BACKGROUND

- 2.1 Karpowership was incorporated for the primary purpose of bidding for (and implementing) projects under the Department of Mineral Resources and Energy’s (“**DMRE**”) Risk Mitigation IPP Procurement Programme (“**RMIPPPP**”) by way of three wholly owned and ringfenced project companies which have been established.
- 2.2 In brief, the RMIPPPP is a programme by the DMRE which is intended to fill the country’s critical short-term energy supply gap. The ultimate objective of the RMIPPPP is to alleviate the country’s current electricity supply constraints (which lead to load-shedding) and to reduce extensive utilisation of the diesel-based peaking electrical generators.
- 2.3 The RMIPPPP was designed to procure 2000 MWs of new generation capacity from different types of dispatchable power projects with the goal of speedily connecting to the grid and providing South Africans with much needed electricity.
- 2.4 The RMIPPPP’s request for proposals was published during August 2020 and, on 18 March 2021, Karpowership, and nine other entities, were appointed as preferred bidders by the Minister of the DMRE.
- 2.5 Karpowership was awarded preferred bidder status under the RMIPPPP in respect of three power generation facilities at the Port of Ngqura/Coega, Saldanha Bay and Richard’s Bay, each comprising a floating facility or “Powership” which will be stationed offshore to eventually feed electricity into the national power grid.
- 2.6 After Karpowership was nominated as a preferred bidder under the RMIPPPP, it applied for and was granted electricity generation licences to operate all three generation facilities by NERSA between August and September 2021.
- 2.7 As your Lordship will note from annexure B, OUTA has requested that we highlight that Karpowership’s application for the environmental authorisation of the three generation facilities has been rejected by the Department of Forestry, Fisheries, and the Environment (“**DFFE**”) (such authorisations are one of the numerous requirements for the implementation of the RMIPPPP). The relevance of the DFFE’s decision is an issue for Green Connection and OUTA to establish, save to mention that this information is public knowledge and Karpowership has already lodged its appeal of the decision.

3. JOINT HEARING AND CASE MANAGEMENT

- 3.1 On 25 April 2022, Green Connection instituted a review application for an order reviewing and setting aside the decisions of NERSA to approve the granting of the three electricity generation licences to Karpowership. Green Connection contends that NERSA’s decisions fall to be set aside on several the grounds set out in section 6(2) of the Promotion of Administrative Justice Act 3 of 2000 (“**PAJA**”). In addition, Green Connection alleges that the decisions were procedurally unfair and irrational being that NERSA failed to comply with s10(2)(g) of the Electricity Regulation Act 4 of 2006 (“**ERA**”) and NERSA failed to discharge its obligation to take into account certain environmental considerations.

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- 3.2 Comparatively, on 26 April 2022, OUTA instituted a review application in terms of section 6 of PAJA seeking to set aside NERSA's decisions to grant the generation licenses to Karpowership. OUTA's review is similarly grounded on the contention that the decision was allegedly irrational, unreasonable and procedurally unfair as it infringed upon sections 2 and 10(2)(e) of ERA in that the licences were granted in the absence of appropriate environmental authorisations being granted to Karpowership.
- 3.3 Karpowership and NERSA have opposed both applications while Eskom (the Sixth and Eighth Respondent in the respective proceedings) has delivered notices to abide.
- 3.4 Taking the above into consideration, it is evident that, despite approaching the court separately, Green Connection and OUTA are seeking the same substantive relief against the same administrative decision and rely on substantially similar grounds. In fact, Green Connection concedes in its founding affidavit (at paragraph 166) that its initial intention was to either join OUTA's application or apply to intervene as an *amicus curiae*.
- 3.5 NERSA delivered a redacted version of the Rule 53 Record on 17 June 2022. As at the date of this letter, discussions on a confidential record and a suitable confidentiality regime remain ongoing.
- 3.6 We think such a regime is necessary to guard our client's rights as some of the information in question, in its view, qualifies for protection under PAIA, POPIA and the provisions of the RMIPPPP. Should your Lordship be inclined to meet with the parties and agreement on the Record or the confidentiality regime has not been reached then our client proposes that this issue be directed by you.
- 3.7 In any event, given the factual, procedural, and legal overlaps between the review applications, Karpowership believes that it would be in the interests of all parties if these two matters were to be heard together by the same judge. This approach will limit costs for all the parties and prevent a duplication of proceedings. This will also enable the reviews to be heard efficiently and with minimal impact on the court's time and resources.
- 3.8 Taking the above onto account Karpowership submits this written request for judicial case management in terms of Uniform Rule 37A(1)(b) as it believes it would be both advantageous and expedient to have the parties collectively agree to applicable timelines under your Lordship's direction.
4. **CONCLUSION**
- 4.1 The expeditious hearing of these matters is not only preferable but is also imperative given that the decision in question relates to a broader issue which is urgent and of national importance. South Africa's electricity supply is under severe pressure and the RMIPPPP has been specifically designed to address this.
- 4.2 The RMIPPPP has experienced significant disruptions already and any delay to the hearing of these matters impacts, not only the parties, but the public at large. It is for that reason that our client believes it would be preferable to have both reviews heard on a preferential basis.
- 4.3 We, therefore, respectfully request that a case management meeting be held with your Lordship for this proposal to be discussed more fully and, hopefully, to confirm a hearing, special allocation, and an expedited timeline for the review applications.

BR
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- 4.4 Should the parties disagree with any other matter discussed in this letter then we assume it will be brought to your Lordship's attention at the appropriate time.
- 4.5 We are, nevertheless, grateful for your Lordship's time and consideration and will avail ourselves for any meetings which you may consider necessary.

Yours faithfully

Pinsent Masons South Africa Inc (registered no.F17331)

This letter is sent electronically and so is unsigned

Enclosures:

1. Annexure A – Letter from Chennells Albertyn 10 June 2022
2. Annexure B – Letter from Jennings Inc 13 June 2022
3. Annexure C – Letter from Jennings Inc dated 20 June 2022

CHENNELLS ALBERTYN
ATTORNEYS, NOTARIES & CONVEYANCERS

10 June 2022

P.O. BOX 1022
STELLENBOSCH 7599

44 ALEXANDER STREET
STELLENBOSCH 7600
SOUTH AFRICA

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FAX: +27 (0) 21 883 8910
E-MAIL: fiona@chennellsalbertyn.co.za
WEBSITE: www.chennellsalbertyn.co.za

Our ref: 11306FB/cvdy
Your ref: 691335.0700

Pinsent Masons South Africa Inc

Attention: Tinyiko Ndlovu

Per email: Tinyiko.Ndlovu@pinsentmasons.com
Andrew.Fawcett@pinsentmasons.com
Jason.Smit@pinsentmasons.com
Sarah.Burford@pinsentmasons.com
Rob.Morson@pinsentmasons.com
Nombasa.Mazwai@pinsentmasons.com

cc: Prince Mudau & Associates

Per email: prince@pm-attorneys.co.za
dineo@pm-attorneys.co.za
kqanedi@pm-attorneys.co.za

Dentons

Per email: Johannesburg.Litigation@dentons.com

Dear Mr Ndlovu

**RE: THE GREEN CONNECTION / NATIONAL ENERGY REGULATOR OF SOUTH AFRICA
AND 5 OTHERS / CASE NO. 23339/2022**

With reference to your letter dated the 9th instant, our instructions are as follows:

1. We are in agreement that the Deputy Judge President may be requested for his directives as follows:
 - 1.1. that both matters, namely the "The Green Connection" matter as well as the "OUTA" matter be heard jointly'
 - 1.2. that the hearing(s) be expedited;
 - 1.3. that a case management meeting is convened to discuss any proposals and agree on an expedited hearing timetable.

Partners: GE Williams BA LLB; F Bester Bluris BProc; AJ Dorer LLB; S Etsebeth LLB; GJ Hendriksz BSocSc LLB
Assisted by: E Mukasa LLB
Consultants: RS Chennells BCom LLB LLM PhD

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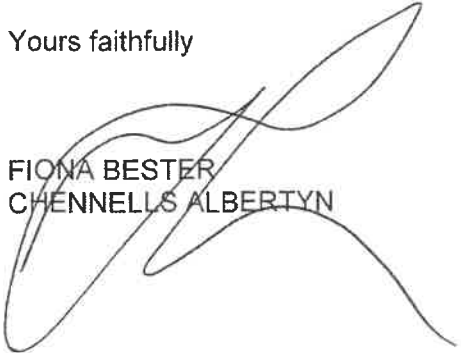
In association with Chrystelle van Staden Attorneys



2. Further to the above, we request you to provide us with a draft agreement pertaining to the confidentiality regime, which will be considered by our client. Kindly further note that we are placing on record that we are not in agreement with the proposed letter you intend to submit to the Deputy Judge President, apart from our agreement as indicated in paragraphs 1.1 to 1.3 above.

Yours faithfully

FIONA BESTER
CHENNELLS ALBERTYN



4





JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015

YOUR REFERENCE:

DATE: 13 June 2022

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

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: UNKNOWN)

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 address this letter to you on behalf of our client, the Organisation Undoing Tax Abuse NPC ("OUTA").
2. We refer to your letter dated 9 June 2022 as well as the accompanying draft letter that your offices intend to send to the DJP and to which our comments were invited.



B.R.
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3. We request that, should you send the intended letter, you remove the last sentence in paragraph 1.3 thereof and instead attach this letter with our client's views and comments thereto and specifically draw the DJP's attention to it.

Ad request for case management:

4. We confirm 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.

Ad background contained in your draft letter:

5. We note the background provided in paragraph 2 of your draft letter, which refers to the merits of the application and seeks to establish a basis for urgency. It also gives the impression that "but for" these review applications the project can proceed. This is not the case.
6. It is not our intention to discuss the merits of these applications in correspondence, but for the sake of transparency we believe that if such background is provided (particularly if it is used as a justification for an accelerated timeline), it is imperative that it is also recorded that your client does not have the necessary environmental authorisations in place to proceed with the project.

B.R.
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7. Regardless of the outcome of these review applications pertaining to the electricity generation licences, your client will not be able to proceed with the project without strictly complying with the provisions of the relevant environmental legislation.

Ad consolidation or joint hearing:

8. We note that your letter refers to both a joint hearing or a consolidation of the two matters. We point out that there is a clear distinction between a joint hearing of matters and a consolidation of matters.
9. Our client is not a party to the Green Connection application and does not have access to Green Connection's application on Caselines. If the relief requested is substantially the same as indicated in your letter, our client has no objection in principle to a joint hearing (provided we are given access to the Green Connection application on Caselines and have the opportunity to properly peruse it and consult thereon).
10. However, our client will not agree to a consolidation of the two applications.

Ad confidentiality of documents:

11. We have already pointed out to you twice that our client cannot agree to a blanket confidentiality arrangement without knowing which documents/information your client wishes to keep confidential. We have invited your client to identify such documents/information so that we can reasonably assess the request, but your client has declined the invitation.



12. What documents your client has provided to NERSA during the application process is known only to your client and NERSA. Your client should therefore be able to predict with a fair degree of certainty what information relating to it will be contained in the record. In view of the above, we fail to understand why your client has declined to specify the documents/information it wishes to keep confidential.
13. In order to save time and to demonstrate our client's *bona fides* in this regard, we suggest the following:
- 13.1 that when the record is provided, writer hereof undertakes not to disclose the documents to OUTA, but to keep them in her office and disclosed and discuss them only with our client's appointed counsel until your client has identified which of the information it considers confidential;
- 13.2 once your client has clearly identified this information, writer hereof (in consultation with counsel) will review the information together with the reasons given for the alleged confidentiality and then comment on it;
- 13.3 should there be a dispute as to the confidentiality of the documents/information identified and/or its inclusion in the record, a time period will be agreed between the parties within which your client may apply by way of an interlocutory application for a court to rule on the confidential nature of the documents/information. The parties will further agree time periods within which further papers in such an application must be filed. Pending the outcome of such an application writer hereof shall only give access to the record to our client's appointed counsel.



Ad indulgence for late delivery of the record:

14. We record that your client's notice of intention to oppose was filed out of time and only on 20 May 2022. On 17 May 2022, NERSA requested our client's indulgence to file the record by no later than 10 June 2022. The indulgence was granted on behalf of our client on 19 May 2022.
15. We confirm that, despite the indulgence that was granted, NERSA did not deliver the record by 10 June 2022.

Ad special allocation:

16. We disagree with your assertions under the heading "*Conclusion*" in your letter, and in particular the inaccurate impression created that these review applications are causing a delay in resolving the problem of South Africa's electricity supply, and that an expedited hearing of these applications will lead to resolving the electricity crisis. As pointed out above and in our client's founding papers, there are still several unresolved issues independent of our client's review application pertaining to the RMIPPPP without which your client cannot proceed.
17. To the extent that it is implied that these review applications are "disruptive" and negatively impact the public, our client holds the opposite view and believes that it is the granting of the licences and potential implementation of the project that is highly detrimental to the public at large.
18. We therefore deny that the allegations contained in your letter constitute a proper basis for an urgent or expedited hearing in this matter.

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19. However, due to the anticipated volume of the application (with the documents expected to exceed 500 pages, especially if the matters are heard together) and the expected longer duration of the hearing, our client has no objection to the parties requesting a special allocation subject to the availability of counsel for all parties.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,
Andri Jennings
Director

B.R.




JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015

YOUR REFERENCE:

DATE: 20 June 2022

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

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: UNKNOWN)

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 your email of 15 June 2022 and the attached draft documents.
2. It is unclear as to what is meant by the sentence contained in the second paragraph of your email "...the agreement on this regime does not require our client to provide a list in the form requested by the applicants as it is evident from their own papers what the information relates to." (Emphasis added)
3. We do not know what part of our client's papers you are referring to and cannot reasonably respond to such vague allegations. According to us nothing of this nature (that parts of the record are/should be confidential) is evident from our client's papers. Kindly therefore clarify what part of our client's application and what

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

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

Cindy Pestano (LLB - UNISA) Conveyancer | Suléne von Rensburg (BA - LLB) Associate Attorney, Notary and Conveyancer

Malizzo van der Linde - Candidate Legal Practitioner | Ian Jennings - Candidate Legal Practitioner



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222 Smit Street, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572

21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 258 8770

B.R.
✓

information contained therein you are referring to in order for us to take proper instructions and formulate a response.

4. We further refer to paragraph 1.4.1 of your track-changed draft letter intended for the attention of the DJP. It is not correct that our client agreed to the matter being heard on an expedited basis. In paragraph 18 of our letter dated 13 June 2022 writer placed the following in record:

"18. We therefore deny that the allegations contained in your letter constitute a proper basis for an urgent or expedited hearing in this matter."

5. We did, however, indicate in paragraph 19 of our letter of 13 June 2022 that our client would have no objection to a special allocation being requested due to the anticipated volume of the papers.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,
Andri Jennings
Director

B.R.
y
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ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

AA21

OUR REFERENCE: A JENNINGS/OUT015
 YOUR REFERENCE:
 DATE: 04 July 2022

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

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: UNKNOWN)

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 write to you following the emailing of the redacted record to our offices between 15h30 – 15h39 on Friday, 17 June 2022.
2. Despite the fact that: (a) NERSA has never indicated that it wishes to keep parts of the record confidential; and (b) there is no agreement that a redacted record could be made available, we have noted that substantial parts of the record have been redacted. Despite assurances by writer hereof that the record in unredacted form would not be released to our client until the issue of confidentiality was resolved, an unredacted copy of the record is yet to be provided.

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Reg No: 2016/065399/21 | VAT No: 4660291974

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

Cindy Pestano (LLB - UNISA) Conveyancer | Sulene von Rensburg (BA - LLB) Associate Attorney, Notary and Conveyancer

Malissa van der Linde - Candidate Legal Practitioner | Ian Jennings - Candidate Legal Practitioner



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BR
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 2

3. To date, we have also not received an index to the record and no notice that the record has been uploaded onto Caselines.
4. We reiterate that our client did not agree to the provision of a redacted record and in the absence of such an agreement there is no basis on which NERSA can unilaterally decide to submit a redacted record. You will be aware that, according to the relevant authorities, the right to acquire the record of the proceedings is primarily intended to operate for the benefit of the applicant. Our client, the applicant, is prejudiced by the defective and/or incomplete record. This prejudice is amplified by the fact that NERSA did not provide any justification for the redacted portions.
5. NERSA's unilateral redaction of the record without proper justification is contrary to the principles of accountability, openness, and transparency that PAJA seeks to promote.
6. In view of the above, we again request you to provide our offices with a complete and unredacted copy of the record. We repeat the undertaking already given in paragraph 13 of our letter of 13 June 2022 regarding such an unredacted record.
7. Our client is neither able nor required to supplement its founding papers until NERSA files a complete record. We therefore assume that all parties are in agreement that the filing of our client's supplementary founding papers should be held over until the complete and unredacted record is filed, alternatively until a Case Manager has been appointed and the issue of confidentiality of the record has been resolved through the Case Management process. If this is not the case, please notify writer hereof immediately, as our client will then have no option but to launch an application to compel NERSA to file the complete record.
8. In view of the fact that NERSA has never indicated that it intended to invoke the confidentiality of the record or any part thereof, and further the fact that the issue of confidentiality was raised solely by Karpowership, we would ask you to confirm whether the redaction of the record was a joint effort between NERSA and any of the Karpowership respondents or their representatives.
9. We look forward to your response.

B.R
[Signature]

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,

Andri Jennings

Director

B.R.
J
K

CHENNELLS ALBERTYN
ATTORNEYS, NOTARIES & CONVEYANCERS

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WEBSITE: www.chennellsalbertyn.co.za

4 July 2022

Our ref: 11306FB/cvdv
Your ref: 691335.0700

Pinsent Masons South Africa Inc

Attention: Tinyiko Ndlovu

Per email: Tinyiko.Ndlovu@pinsentmasons.com
Andrew.Fawcett@pinsentmasons.com
Jason.Smit@pinsentmasons.com
Sarah.Burford@pinsentmasons.com
Rob.Morson@pinsentmasons.com
Nombasa.Mazwai@pinsentmasons.com

cc: Prince Mudau & Associates
Per email: prince@pm-attorneys.co.za
dineo@pm-attorneys.co.za
kganedi@pm-attorneys.co.za

Jennings Incorporated
Attention: Andri Jennings
Per email: andri@jinc.co.za

Dentons
Per email: Johannesburg.Litigation@dentons.com

Dear Sirs

**RE: THE GREEN CONNECTION / NATIONAL ENERGY REGULATOR OF SOUTH AFRICA
AND 5 OTHERS / CASE NO. 23339/2022
ORGANISATION UNDOING TAX ABUSE NPC ("OUTA") // NATIONAL ENERGY
REGULATOR OF SOUTH AFRICA AND 7 OTHERS / CASE NO. 23017/2022**

We have received an email from Mr Ndlovu of Pinsent Masons Attorneys on the 1st instant in response to our request for an extension of time to file supplementary papers. However, we wish to place on record that we are in agreement with the stance taken by Jennings Incorporated, acting on behalf of OUTA.

Partners: GE Williams BA LLB; F Bester BLuris BProc; AJ Dorer LLB; S Etsebeth LLB; GJ Hendriksz BSocSc LLB
Assisted by: E Mukasa LLB
Consultants: RS Chennells BCom LLB LLM PhD

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In association with Chrystelle van Staden Attorneys



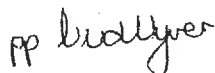
We have noted that your Mr Ndlovu is of the opinion that our client, The Green Connection, should supplement its papers, and if it believes that the Record is defective, the necessary steps should be instituted.

However, we are in agreement with Jennings Incorporated, that as is the opinion with OUTA, our client did not agree to the provision of a redacted Record and in the absence of such an agreement NERSA was in no position to submit a redacted Record. We similarly place on record that our client will be prejudiced by the defective and/or incomplete Record.

We therefore request confirmation that all parties are in agreement that our client's supplementary founding papers should be held over until the complete Record is filed, or alternatively until a Case Manager has been appointed and the issue of confidentiality resolved.

We therefore request confirmation from all parties that the filing of supplementary papers will be held over until the complete Record is filed or alternatively a Case Manager is appointed and the confidentiality issue resolved.

Yours faithfully



FIONA BESTER
CHENNELLS ALBERTYN



CHENNELLS ALBERTYN
ATTORNEYS, NOTARIES & CONVEYANCERS

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21 July 2022

Our ref: 11306FB/cvdv
Your ref: 691335.0700

Pinsent Masons South Africa Inc

Attention: Tinyiko Ndlovu

Per email: Tinyiko.Ndlovu@pinsentmasons.com
Andrew.Fawcett@pinsentmasons.com
Jason.Smit@pinsentmasons.com
Sarah.Burford@pinsentmasons.com
Rob.Morson@pinsentmasons.com
Nombasa.Mazwai@pinsentmasons.com

WITHOUT PREJUDICE

cc: Prince Mudau & Associates
Per email: prince@pm-attorneys.co.za
dineo@pm-attorneys.co.za
kganedi@pm-attorneys.co.za

Jennings Incorporated
Attention: Andri Jennings
Per email: andri@jinc.co.za

Dentons
Per email: Johannesburg.Litigation@dentons.com

Dear Sirs

**RE: REVIEW APPLICATION: THE GREEN CONNECTION NPC / NATIONAL ENERGY
REGULATOR OF SOUTH AFRICA AND 5 OTHERS / CASE NO. 23339/2022**

With reference to a proposed confidentiality agreement regarding the Rule 53 Record, we refer to your email dated 24 May 2022 and have noted your proposal that the complete Rule 53 Record will be provided on condition that our client's legal representatives and experts sign a confidentiality agreement.

Whilst our client does not agree that the Rule 53 Record should remain confidential to the extent suggested by your client, in order to progress the matter our client is willing to agree to an interim confidentiality regime, pending a judicial determination by the court, at the hearing of the review

Partners: GE Williams BA LLB; F Bester Bluris BProc; AJ Dorer LLB; S Etsebeth LLB; GJ Hendriksz BSocSc LLB
Assisted by: E Mukasa LLB
Consultants: RS Chennells BCom LLB LLM PhD

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In association with Chrystelle van Staden Attorneys



B.R.
[Signature]

applications, of the issue whether the disputed parts of the Rule 53 Record should remain confidential (and, if so, the extent of the confidentiality) or not. Our client re-iterates that there is a compelling public interest in making the entire Record – or at least enough of the Record to enable readers to comment meaningfully on its content – available to the public. All of our client's rights are reserved in this regard.

In addition, our client requires that certain nominated individuals from it may also be privy to the complete Rule 53 Record, on condition that they sign a confidentiality agreement to be agreed between the parties. We, as the legal representatives, will not be able to take proper instructions without these representatives of our client perusing the Record.

We propose that a confidentiality agreement be concluded with the following persons:

1. Adv Peter Hathorn SC (senior counsel for Green Connection);
2. Adv Caroline Rogers (junior counsel for Green Connection);
3. Fiona Bester (attorney for Green Connection);
4. Adrian Pole (legal advisor for Green Connection);
5. Liziwe McDaid (Board member of Green Connection);
6. Vuyelwa Nandipha Masango (employed by Green Connection and deponent of founding affidavit); and
7. Hilton Trollip (expert appointed by Green Connection).

Kindly indicate whether you will be in agreement to provide the full and complete Rule 53 Record should such a confidentiality agreement be concluded.

Yours faithfully



FIONA BESTER
CHENNELLS ALBERTYN



Archived: Monday, 13 March 2023 17:51:39

From: [Nombasa Mazwai](#)

Sent: Monday, 25 July 2022 13:23:13

To: [Tinyiko Ndlovu](#) [Sarah Burford](#)

Subject: FW: RE: CASE NO: 23017/2022 - ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF S.A 7 OTHERS and CASE NO: 23339/22 - THE GREEN CONNECTION NPC // THE NATIONAL ENERGY REGULATOR OF S.A & 5 OTHERS

Importance: Normal

Sensitivity: None

Nombasa Mazwai
Candidate Attorney
for Pinsent Masons

D: [+27 10 493 4622](#) M: [+27 71 893 3727](#) I: [294622](#)

Winner – 'Law Firm of the Year' at the Legal Business Awards 2021

Pinsent Masons supports agile working, so please don't feel you need to respond to this email outside your working hours.

From: Lutendo Muneri <LuMuneri@judiciary.org.za>

Sent: Monday, 25 July 2022 10:35

To: Jason Smit <Jason.Smit@Pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; fiona@chennellsalbertyn.co.za; prince@pm-attorneys.co.za; dineo@pm-attorneys.co.za; kganedi@pm-attorneys.co.za; Tinyiko.Ndlovu@pinsentmasions.com; Sarah.Burford@pinsentmasions.com; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; carol@chennellsalbertyn.co.za
Cc: Sidesha.sidesha@gmail.com; Siviwe Sidesha <SSidesha@judiciary.org.za>; Anna-Marie A. Nieuwoudt <AnNieuwoudt@judiciary.org.za>; Olebogeng Rapoo <LRapoo@judiciary.org.za>

Subject: [EXTERNAL] RE: CASE NO: 23017/2022 - ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF S.A 7 OTHERS and CASE NO: 23339/22 - THE GREEN CONNECTION NPC // THE NATIONAL ENERGY REGULATOR OF S.A & 5 OTHERS

Good day,

The above matter and your letter dated 20 June 2022 bears reference.

Kindly take note that the AJP has granted a meeting with the parties.

The meeting will take place on Monday, 05 September 2022 at 08:30

This meeting is to take its form virtually by Microsoft teams.

Mr Sidesha(secretary) will send the link to the meeting.

Kindly send Mr Sidesha all the parties' email addresses that you wish to be present at the said meeting.

His e-mail address is as follows : SSidesha@judiciary.org.za and Sidesha.sidesha@gmail.com

NB.... AGENDA FOR THE MEETING TO BE SENT PRIOR TO THE MEETING.

NB: LEGAL REPRESENTATIVES NEED NOT ROBE FOR VIRTUAL MEETINGS, BUT SHOULD BE FORMALLY DRESSED.

Regards
Ms Muneri Lutendo

B.R
y



Office Of The Acting Judge President Ledwaba
Cnr Madiba & Paul Kruger Streets
Room 7.15. Pretoria High Court
Tel: 012 315 7576
Email: LuMuneri@judiciary.org.za

71

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71

B.R. 

Archived: Monday, 13 March 2023 17:51:45

From: [Tinyiko Ndlovu](#)

Mail received time: Tue, 23 Aug 2022 15:04:02

Sent: Tue, 23 Aug 2022 14:04:00

To: [Carol van der Vyver](#) | [Chennells Albertyn](#) [Andrew Fawcett](#) [Jason Smit](#) [Sarah Burford](#) [Rob Morson \(Projects\)](#) [Nombasa Mazwai](#) [prince@pm-attorneys.co.za](#) [dineo@pm-attorneys.co.za](#) [kganedi@pm-attorneys.co.za](#) 'Andri Jennings' [Johannesburg.Litigation@dentons.com](#) [prince@pm-attorneys.co.za](#) [dineo@pm-attorneys.co.za](#) [kganedi@pm-attorneys.co.za](#)

Cc: 'Fiona Bester'

Subject: RE: Green Connection / NERSA and others [PM-SA.FID40785]

Importance: Normal

Sensitivity: None

Dear Fiona

Our client's instructions are that, while it is prepared to agree to a confidentiality regime, it will only do so with respect to Green Connection's external counsel and attorneys. Agreeing a confidentiality regime with any other individual identified in your letter of 21 July 2022 (particularly those listed at item 4 – 7) would, with respect, be counter-productive.

To the extent that your client insists on the further disclosure then our view is that this issue must be directed by the AJP at the case management meeting.

As stated previously, our client is not obliged to disclose any of its confidential information absent a suitable confidentiality regime.

Tinyiko Ndlovu
Lawyer
for Pinsent Masons

D: [+27 10 493 4587](#) M: [+27 66 246 8368](#) I: [294587](#)

Winner – 'Law Firm of the Year' at the Legal Business Awards 2021

Pinsent Masons supports agile working, so please don't feel you need to respond to this email outside your working hours.

From: Carol van der Vyver | Chennells Albertyn <carol@chennellsalbertyn.co.za>

Sent: Tuesday, 23 August 2022 14:30

To: Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>; Sarah Burford <Sarah.Burford@pinsentmasons.com>; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; prince@pm-attorneys.co.za; dineo@pm-attorneys.co.za; kganedi@pm-attorneys.co.za; 'Andri Jennings' <andri@jinc.co.za>; Johannesburg.Litigation@dentons.com

Cc: 'Fiona Bester' <fiona@chennellsalbertyn.co.za>

Subject: [EXTERNAL] URGENT: Green Connection / NERSA and others

Importance: High

Dear Sirs

Attached is our letter for your urgent attention.

Kind regards

[Carol van der Vyver](#)

Secretary to Fiona Bester (Senior Partner)

CHENNELLS ALBERTYN

Attorneys and Conveyancers



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015

YOUR REFERENCE:

DATE: 29 August 2022

TO: DEPUTY JUDGE PRESIDENT
THE HONOURABLE MR JUSTICE LEDWABA

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

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/cvdy)

Sirs

AGENDA PROPOSED BY THE ORGANISATION UNDOING TAX ABUSE NPC ("OUTA") FOR CASE MANAGEMENT MEETING BEFORE THE HONOURABLE LEDWABA DJP SCHEDULED FOR 5 SEPTEMBER 2022 AT 08:30

In re: Case number 23017/2022 (OUTA v NERSA & Others)
Case number 23339/2022 (Green Connection v NERSA & Others)

Please find attached the agenda proposed by the Organisation Against Tax Abuse NPC ("OUTA"), the applicant in matter number 23017/2022 for the case management meeting scheduled for 5 September 2022 at 08:30 before the Honourable Ledwaba DJP. The agenda contains the main points for discussion, a brief background, and OUTA's position in respect of the discussion points.

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

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

Cindy Pasiona (LLB - UNISA) Conveyancer | Suliene van Rensburg (BA - LLB) Associate Attorney, Notary and Conveyancer

Malissa van der Linde - Candidate Legal Practitioner | Ian Jennings - Candidate Legal Practitioner

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B.R.

The case management meeting is scheduled for the two review applications brought by OUTA and The Green Connection NPC respectively in the above Honourable Court under case number 23017/2022 and 23339/2022 against the National Energy Regulator ("NERSA") and Others.

All other parties in both the above-mentioned proceedings are copied hereto.


Kind regards
Andri Jennings
Director


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JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015

YOUR REFERENCE:

DATE: 29 August 2022

TO: DEPUTY JUDGE PRESIDENT
THE HONOURABLE MR JUSTICE LEDWABA

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

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: T1306FB/cvdv)

Sirs

AGENDA PROPOSED BY THE ORGANISATION UNDOING TAX ABUSE NPC ("OUTA") FOR CASE MANAGEMENT MEETING BEFORE THE HONOURABLE LEDWABA DJP SCHEDULED FOR 5 SEPTEMBER 2022 AT 08:30

In re: Case number 23017/2022 (OUTA v NERSA & Others)
Case number 23339/2022 (Green Connection v NERSA & Others)

1. Consolidation:

According to OUTA the parties are all in agreement that the two review applications referred to above shall be jointly heard but not consolidated. The Case Manager will be requested to confirm this and/or provide further direction in this regard.

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 redaction of 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.
- 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.

B.R.

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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 file 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;

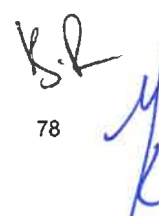
2.5.3 in the event of NERSA filing an application for condonation, that the parties be permitted to approach the Case Manager again for purposes of setting down time periods for the filing of further papers in and hearing of the interlocutory application.

3. Special allocation:

It is OUTA's view that it is premature at this stage for an allocation to be requested whilst the dispute about the record is pending.

B.R
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y

 Jennings
Kind regards
Andri Jennings
Director


K.R.
78



ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015
 YOUR REFERENCE: LIST OF REDACTED RECORDS
 DATE: 29 AUGUST 2022

ANNEXURE "A" – LIST OF REDACTED RECORDS FROM RECORD RECEIVED FROM NERSA

1. Page 4 – Id numbers of directors of Karpowership
2. Page 7 – Contact details of Generation Station
3. Page 13 – Table of Content
4. Page 14 – Summary of PPA response, Key terms, and tariff structure
5. Page 15 – Financial Information
6. Page 26 – BEE Compliance Information
7. Page 28 – Support documents, Table of Content
8. Page 30 – Various items in the Table of Content
9. Page 31 – Various items in the Table of Content
10. Page 54 – Email address and names
11. Page 421, 422 – Table 1 of the Charge Rates used to calculate the tariff in terms of Schedule 9 of the Power Purchase Agreement
12. Page 438, 439 – Financial Information
13. Page 441 – Table 8, The Applicant's Charge Rates for calculating the tariff

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

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

Cindy Pestano (LLB - UNISA) Conveyancer | Suliene van Rensburg (BA - LLB) Associate Attorney, Notary and Conveyancer

Matthys van der Linde - Candidate Legal Practitioner | Ian Jennings - Candidate Legal Practitioner

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B.R.

14. Page 442 - Paragraph 66 in its entirety together with the heading and table under paragraph 71
15. Page 443, 444 - Paragraph 82 in its entirety together with the heading
16. Page 446 - Paragraph 94 in its entirety together with the heading
17. Page 456 - Contractual Arrangement, Particulars of Fuel Supply Arrangements
18. Page 457- Attachment to Particulars of Fuel Supply Arrangements
19. Page 458 - Section E - Maintenance Programmes and Decommissioning Costs and Attachment
20. Page 459 - E3, Details of major generation station expansion and modifications planned for in the feasibility study (Dates, Costs in Rands (state year) and description)
21. Page 460 - Section F1, F2 and F3 together with attachments of Section F, Customer Profile
22. Page 461 - Summary of Power Purchase Agreement and attachments, Notes to Section F
23. Page 463 - Financial Information- Section G1, attachment of G2, G3 and attachment, G4 and attachment, Fill in table
24. Page 464 - Notes to Section G
25. Page 465 - Answers to the following questions under Section H - Human Resources Information
 - 25.1 What is the skill level for working on the project?
 - 25.2 What types of jobs will be available during construction and then during operations for the local immediate community?
26. Page 466 - Training and Powership Academy
27. Page 468 - Item 8 in the Support Documents and Table of Content

B.R


28. Page 474 – Attachment: Items 10 – 15 in the Support Documents and Table of Content
29. Page 476 – Attachment: Item 16 in Support Documents and Table of Contents
30. Page 478, 479– Various items in the Table of Content of Application for an Electricity Generation Licence in terms of the Electricity Regulation Act
31. Page 555, 556 – Table 1 indicating the charge rates used to calculate the tariff in Schedule 9 of the Power Purchase Agreement
32. Page 574 – Financial Information
33. Page 575 – Paragraph 59 to 62 in its entirety together with the heading
34. Page 576 – Paragraph 66 in its entirety together with the heading
35. Page 577 – Table and Paragraph 68 in its entirety together with the heading
36. Page 578 – Paragraph 73 and Paragraph 76 in its entirety together with the heading and with Table
37. Page 582 – Paragraph 94 in its entirety together with the heading
38. Page 1147 – Contact information of Kishoor Pitamber at Karpowership
39. Page 1148 – Details of Directors of Karpowership
40. Page 1151 – Contact information of Kishoor Pitamboor at Karpowership
41. Page 1154 – Table of Content of Particulars of Fuel Supply Arrangements
42. Page 1157 – Section F – Customer Profile, Item 4 and Item 5 Attachments and Table of Contents



43. Page 1158 - Response on Summary of Power Purchase Agreement and Key terms of the Power Purchase Agreement and tariff structure
44. Page 1159 - Section G: Financial Information - Response to G1 to G3 and table in G4
45. Page 1170 - Detailed economic development percentages that have been submitted as part of the RMIPPPPP, Detailed economic development values that have been submitted as part of the RMIPPPPP as well as Table of Contents
46. Page 1172 - Item 16 in Support Documents and Table of Contents
47. Page 1174, 1175 - Various items in Table of Contents - Supporting Documents - Karpowership Coega
48. Page 1240, 1241 - Table 1 of Charge Rates used to calculate the tariff in Schedule 9 of the Power Purchase Agreement
49. Page 1260 - Financial Information - Paragraph 51 to 53 in its entirety together with the heading
50. Page 1261 - Paragraph 59, 60 and 62 in its entirety together with the heading
51. Page 1263 - Table 8 of Applicant's charge rules for calculating the tariff using the above formulas
52. Page 1264, 1265 - Paragraph 68 and 74 in its entirety together with the heading together with table
53. Page 1268 - Paragraph 96 in its entirety together with the heading

Kind regards,
Delia Turner
Attorney

CHENNELLS ALBERTYN
ATTORNEYS, NOTARIES & CONVEYANCERS

P.O. BOX 1022
STELLENBOSCH 7599

44 ALEXANDER STREET
STELLENBOSCH 7600
SOUTH AFRICA

TEL: +27 (0) 21 883 3189
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E-MAIL: fiona@chennellsalbertyn.co.za
WEBSITE: www.chennellsalbertyn.co.za

2 September 2022

Our ref: 11306FB/cvdv

Deputy Judge President

The Honourable Mr Justice Ledwaba
Attention: Lutendo Muneri
Per email: LuMuneri@judiciary.org.za

Pinsent Masons South Africa Inc

Attention: Tinyiko Ndlovu
Per email: Tinyiko.Ndlovu@pinsentmasons.com
Andrew.Fawcett@pinsentmasons.com
Jason.Smit@pinsentmasons.com
Sarah.Burford@pinsentmasons.com
Rob.Morson@pinsentmasons.com
Nombasa.Mazwai@pinsentmasons.com

URGENT

cc: Prince Mudau & Associates
Per email: prince@pm-attorneys.co.za
dineo@pm-attorneys.co.za
kganedi@pm-attorneys.co.za

Jennings Incorporated
Attention: Andri Jennings
Per email: andri@jinc.co.za

Dentons
Per email: Johannesburg.Litigation@dentons.com

Dear Sirs / Ms

RE: CASE MANAGEMENT MEETING TO BE HELD BEFORE THE HONOURABLE LEDWABA DJP ON 5 SEPTEMBER 2022 FOR CASE NUMBERS 23017/2022 AND 23339/2022

We write to you on behalf of our client, The Green Connection NPC ("Green Connection"), the applicant in case number 23339/2022.

Partners: GE Williams BA LLB; F Bester BLuris BProc; AJ Dorer LLB; S Etsebeth LLB; GJ Hendriksz BSocSc LLB
Assisted by: E Mukasa LLB; K. Gouwsventer BA LLB;
Consultants: RS Chennells BCom LLB LLM PhD

Rondebosch: 18A Greenwich Grove, Station Road,
Rondebosch, 7700 • PO Box 78, Newlands, 7725
Tel: 021 685 8354 • Fax: 021 685 0710
• E-mail: info@chennellsalbertyn.co.za

Stellenbosch: 44 Alexander Street, Stellenbosch, 7600
• PO Box 1022, Stellenbosch, 7599
Tel: 021 883 3189/883 8069 • Fax: 021 883 8910
• E-mail: chenstel@chennellsalbertyn.co.za

In association with Chrystelle van Staden Attorneys



B.R.
4

2.

We refer to the case management meeting scheduled for 5 September 2022 at 08h30 before the Honourable Ledwaba DJP and to the agenda for same proposed by the Organisation Undoing Tax Abuse NPC ("**OUTA**") on 29 August 2022.

We enclose herewith the agenda proposed by Green Connection for the case management meeting.

Kind regards



FIONA BESTER
CHENNELLS ALBERTYN

1





BY E-MAIL

Acting Judge President
The Honourable Mr Justice Ledwaba
LuMuneri@judiciary.org.za
annieuwoudt@judiciary.org.za

Our Ref: 717435.1\691335.07000

DDI +27104934587

E: Jason.Smit@pinsentmasons.com

2 September 2022

Dear Honourable Acting Judge President Ledwaba,

ORGANISATION FOR UNDOING TAX ABUSE / NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 7 OTHERS (CASE NO: 23017/2022)

GREEN CONNECTION / NATIONAL ENERGY REGULATOR OF SOUTH AFRICA AND 5 OTHERS (CASE NO: 23339/2022)

DIRECTORS
Junaid Banoobhai
Claire Barclay
Jurg van Dyk
Edward James
Deidré Simaan
Jason Stuart Smit
Daniella Zussa

1. We refer to: -
 - 1.1 the case management meeting scheduled for 5 September 2022;
 - 1.2 the proposed Agenda delivered by OUTA on 29 August 2022; and
 - 1.3 Green Connection's correspondence in response which was sent on 2 September 2022.
2. We address you on behalf of our client, Karpowership SA (Pty) Ltd and its subsidiaries namely, Karpowership SA Saldanha Bay (RF) Proprietary Limited, Karpowership SA Coega (RF) Proprietary Limited and Karpowership SA Richard's Bay (RF) Proprietary Limited (collectively referred to as "**Karpowership**") in relation to the above matters.
3. This letter is not intended to constitute a complete response to the issues raised either by OUTA or Green Connection in the above correspondence and is intended to only clarify Karpowership's position ahead of the case management meeting.
4. **CONSOLIDATION**
 - 4.1 Karpowership agrees that it would be preferable for the respective applications to be heard jointly and on a case managed basis. This is to enable the reviews to be heard efficiently and with minimal impact on the court's time and resources.

Pinsent Masons South Africa Inc (registered no.F17331)
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T +27 10 493 4600 F +27 10 493 4611

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For a full list of the jurisdictions where we operate, see www.pinsentmasons.com

B.R
M/K



5. RULE 53 RECORD

- 5.1 At the outset, we record that Karpowership rejects both directions that have been requested by OUTA and Green Connection on this issue.
- 5.2 Karpowership's submissions will be made in full before Your Lordship, but we believe that some context may be helpful for present purposes. As part of its electricity generation license applications (which are the subject of these reviews), our client was required to submit some of its confidential information (which it did on a redacted basis). The reason this information was made confidential is because it is either protected in terms of the provisions of PAIA and POPIA or other undertakings which our client has given to the Department of Mineral Resources and Energy as part of the RMIPPPP. This information relates to, for example, our client's proprietary trade secrets.
- 5.3 Karpowership has never objected to the disclosure of this information as part of the review proceedings or disputed its relevance. All Karpowership has requested is that suitable protection first be put in place before its confidential information is disclosed to third parties.
- 5.4 To protect its information, Karpowership proposed a confidentiality regime which is identical to that which has been approved by the Constitutional Court in the *Helen Suzman* decision.¹ For your Lordship's convenience the regime contemplated, was cited by the Constitutional Court with approval as follows:²
- "access to the confidential part of the Commission's record to legal representatives of the parties in the main application and one independent expert appointed by each party to assist in that application. In addition, these persons w[ould] only have access after they ha[d] signed a confidentiality undertaking in the form dictated by the order. In terms of that undertaking the signatory pledge[d] not to divulge the information that he or she obtained from the record to anybody outside the stipulated group of persons, which group d[id] not include the parties themselves or any of their employees. The order further require[d] that any pleading, affidavit or argument filed in the main application be made up in two parts – a confidential version and a non-confidential version; that all references to confidential information be expunged from the non-confidential version; and that access to the confidential version be reserved to permitted persons and the judge presiding in the main application."*
- 5.5 Both applicants rejected our proposal and made their own separate counterproposals (the details of which are set out in their correspondence). Our view is that these counterproposals are inadequate and leave our client vulnerable in a context where (i) the confidentiality of this information is protectable by law and (ii) our client disputes the standing of the applicants to bring these reviews (and, in turn, to gain even limited access to this information).
- 5.6 Be that as it may, no prejudice is suffered by the applicants if the above regime is adopted. Karpowership's position is that the record must be prepared on both a confidential and non-confidential basis (with the applicants being given full access to the latter). The confidential record should only be made available to the applicants' legal

¹ *Helen Suzman Foundation v Judicial Service Commission* (CCT289/16) [2018] ZACC 8; 2018 (4) SA 1 (CC); 2018 (7) BCLR 763 (CC) (24 April 2018).

² *Helen Suzman*, at paragraph 73.

B-R
4



representatives and if they are of the view that certain information ought to be made available on an unrestricted basis then they are free approach the court for relief.

- 5.7 In response to paragraph 2.3 of Green Connections letter specifically, the reference to “experts” in our client’s draft proposal means independent experts. With respect, it’s apparent that Mr Trollip is not acting independently in these proceedings. Nevertheless, the regime proposed by Karpowership would enable either applicant to approach the court for relief if the parties are unable to resolve a dispute on this aspect.

6. **SPECIAL ALLOCATION**

- 6.1 While our client had initially requested that the reviews be heard on an expedited basis, it agrees that such a request may now be premature given the impasse on the Rule 53 record.

Yours faithfully

Pinsent Masons South Africa Inc (registered no. F17331)

This letter is sent electronically and so is unsigned



ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015

YOUR REFERENCE:

DATE: 05 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. With reference to the case management meeting held today before the Honourable Deputy Judge Ledwaba and to take the matter forward.
2. We request that you provide us with a proper index to the record as well as a list of portions that were redacted.
3. This will be required for purposes of us identifying what has been redacted and to enable us to take proper instructions from our client.

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

Andri Jennings (LLB - UP) Director

Delia Turner (LLB - UP) Associate Attorney | Cindy Pestana (LLB - UNISA) Conveyancer
Malizzo van der Linde (LLB - NWU) Attorney | Ian Jennings - Candidate Legal Practitioner



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222 Smit Street, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572

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B.R.
[Signature]

4. As soon as the above has been provided we will be in a position to revert on the way forward regarding the proposal from Karpowership pertaining to confidentiality.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,

Andri Jennings

Director

B.R.
M
K

Archived: Tuesday, 14 March 2023 11:43:51

From: kganedi@pm-attorneys.co.za

Sent: Tuesday, 06 September 2022 15:30:54

To: 'Andri Jennings'

Cc: 'Carol van der Vyver | Chernells Albertyn' fiona@chernellsalbertyn.co.za Tinyiko Ndlovu Andrew Fawcett Jason Smit Sarah Burford Nombasa Mazwai Rob Morson (Projects) Johannesburg.Litigation@dentons.com 'Irene Pienaar' 'Delia Turner' 'Prince Mudau' dineo@pm-attorneys.co.za zubaida@pm-attorneys.co.za 'Irene Komape'

Subject: [EXTERNAL] RE: CASE NO: 23017/2022 - ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF S.A 7 OTHERS and CASE NO: 23339/22 - THE GREEN CONNECTION NPC // THE NATIONAL ENERGY REGULATOR OF S.A & 5 OTHERS

Importance: Normal

Sensitivity: None

Attachments:

[Index to Rule 53 Record - OUTA and THE GREEN CONNECTION v NERSA 23017 - 2022 and 23339-2022.pdf](#)

Dear Sirs

We acknowledge receipt of your email below and confirm that it is receiving attention.

Attached please find a provisional index to the Rule 53 record for your attention.

A list of the redacted information shall follow as soon as possible.

Kind Regards,

Kganedi Mashabathakga



Prince Mudau & Associates

ATTORNEYS, NOTARIES AND CONVEYANCERS

Tel: 010 224 0608

Direct line: 010 224 0643

Fax: 086 695 0882

P.O Box 31884 Braamfontein 2017

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90 




Disclaimer and Confidentiality note:

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From: Andri Jennings <andri@jinc.co.za>

Sent: Monday, 05 September 2022 3:23 PM

To: prince@pm-attorneys.co.za; dineo@pm-attorneys.co.za; kganedi@pm-attorneys.co.za

Cc: Carol van der Vyver | Chennells Albertyn <carol@chennellsalbertyn.co.za>; fiona@chennellsalbertyn.co.za; Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>; Sarah Burford <Sarah.Burford@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Johannesburg.Litigation@dentons.com; Irene Pienaar <irene@jinc.co.za>; Delia Turner <delia@jinc.co.za>

Subject: CASE NO: 23017/2022 - ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF S.A 7 OTHERS and CASE NO: 23339/22 - THE GREEN CONNECTION NPC // THE NATIONAL ENERGY REGULATOR OF S.A & 5 OTHERS

Good day.

Please find attached hereto a letter for your attention.

B.R
y/k

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

CASE NO: 23017/2022

CASE NO: 23339/2022

In the matter between:-

ORGANIZATION UNDOING TAX ABUSE NPC

Applicant

THE GREEN CONNECTION NPC

Applicant

and

NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

Respondent

INDEX TO RULE 53 RECORD

ITEM	DOCUMENT	PAGE NUMBER
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3	National Electricity Regulator of South Africa - Decision	421 - 446
4	Application for an Electricity Generation Licence – Karpowership South Africa Saldanha Bay (RF) Proprietary Limited	447 – 554
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8	Karpowership South Africa Response to Presentations, Stakeholder Comments and Objections	1073 - 1145
9	Application for an Electricity Generation Licence – Karpowership South Africa Coega (RF) Proprietary Limited	1146 - 1239
10	National Electricity Regulator of South Africa - Decision	1240 - 1268

DATED AT MIDRAND ON THIS 1ST DAY OF JULY 2022.

PRINCE MUDAU & ASSOCIATES

Respondent's Attorneys

THRONHILL OFFICE PARK

GROUND FLOOR, BUILDING 2

94 BEKKER ROAD

VORNA VALLEY

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C/O DABISHI NTHAMBELENI INC. ATTORNEYS

ECO FUSION 6

300 WITCH - HAZEL

HIGHVELD

PARK 4

Tel: (010) 224 0608

Fax: 086 6950 882

REF:LIT/MAT180

Index and Redacted Information

Item	Document Description	Pg in Record	Information Description and page	Redacted?	Reason for confidentiality	Applicable legislation
Richard's Bay						
1.	KPS Richard's Bay Generation Licence Application	31-Jan	Particulars (e.g., telephone number, email address) of the contact person – Kishoor Pambier (pg 3) The ID/Reg Number of the current directors of KPS (pg 4) Particulars (e.g., telephone number, email address) of the contact person – Kishoor Pambier (pg 7) Listed information: (pg 8 - 28) Particulars of Fuel Supplier (pg 10) Contractual Arrangements ("Response Redacted") (pg 10) Particulars of Fuel Supply Arrangements ("Redacted") (pg 10) Maintenance Programmes and Decommissioning Costs (pg 11-12) Customer Profile (pg 13 - 14) Summary of PPA ("Redacted") (pg 14) Financial Information ("Redacted") (pg 15-16) Human Resources Information ("Redacted") (pg 17 - 21) Other governmental permissions (pg 22 - 25) Broad Based Black Economic Empowerment (pg 26) Additional Information (pg 27)	Partially redacted Redacted Redacted Redacted Partially redacted Partially redacted Redacted Not redacted Partially redacted Partially redacted	Personal Information This is commercial information, the disclosure of which would be likely to cause harm to commercial or financial interests. Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to - (i) put a third party at a disadvantage in contractual or other negotiations; or (ii) prejudice that third party in commercial competition Confidential in terms of requirements of the RMIAP This is commercial information, the disclosure of which would be likely to cause harm to commercial or financial interests. Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to - (i) put a third party at a disadvantage in contractual or other negotiations; or (ii) prejudice that third party in commercial competition	s34 of PAIA s36(1) of PAIA s36(1) of PAIA
2.	Supporting Documents to Richard's Bay Application					
2.1.	Section C – Richard's Bay 132kV Switching Station Rev5	32		Redacted		
2.2.	Section F – Richard's Bay Single Line Diagram Rev3	33		Redacted		
2.3.	Section H – Job Creation Table Operating Measurement Period	34-36		Redacted		
2.4.	Section I – Environmental and safety permit documents					
2.4.1.	2010-10-20 Memo to Triplo4 re KPS WML Richard's Bay	37-39		Redacted		
2.4.2.	Costal Discharge Permit Feedback	40-41		Redacted		
2.4.3.	KPS Richard's Bay – Response to SAHRA – 29 March 2021	42-43		Redacted		
2.4.4.	Letter from DEFF – Acceptance of the scoping report	44-48		Redacted		
2.4.5.	Letter from the Department of Water and Sanitation	49-50		Redacted		
2.4.6.	Letter from South African Heritage Resource Agency ("SAHRA") dated 30 March 2021	51-53		Redacted		
2.4.7.	WULA – Proof of Submission - Richard's Bay – Phase 1	54-55	Email address (pg 54)	Redacted	Personal Information	s34 of PAIA
2.5.	SIP 20a Preferred Bidder KPS – SIP Status RMIAPPP	56-57		Redacted		
3.	MERSA's report of KPS' Richard's Bay application for a generation licence	55-107	Shareholding structure (pg 63) Summary of Fuel Supply Agreement (pg 66) Summary of Financial Information (pgs 66 – 67) Summary of tariffs (pgs 67 – 70) Summary of economic information (incl BEE info) (pgs 70 – 71) Summary of PPA (pgs 71 – 72) Summary of technical information (pgs 72 – 73)	Redacted Redacted Redacted Redacted Redacted Redacted	This is commercial information, the disclosure of which would be likely to cause harm to commercial or financial interests. Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to - (i) put a third party at a disadvantage in contractual or other negotiations; or (ii) prejudice that third party in commercial competition Confidential in terms of requirements of the RMIAP This is commercial information, the disclosure of which would be likely to cause harm to commercial or financial interests.	s36(1) of PAIA

	"AJP" – PowerPoint presentation titled "Determining the cost of additional CO ₂ Emission Mitigation In The South African Electricity System"	Document titled "calculation of payments"	Calculation of payments	s36(1) of PAIA
7.				
8.	Anneure B – Table of Groundwork's objections, KPS' response and NERISA's analysis	Annexure B – Table of Groundwork's objections, KPS' response and NERISA's analysis	company shareholding [pg 427] Summary of Fuel Supply Agreement [pg 438] Summary of Financial Information [pgs 438 - 439] Summary of tariffs [pgs 440 - 443] Summary of economic information [incl BEE info] [pgs 443 - 444] Summary of PPA [pgs 444 - 445] Summary of technical information [pgs 445 - 446]	This is commercial information, the disclosure of which would be likely to cause harm to commercial or financial interests. Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to - (i) put a third party at a disadvantage in contractual or other negotiations; or (ii) prejudice that third party in commercial competition §36(1) of PAIA
9.	NERSA's reason of decision for granting the KPS Richard's Bay generation licence	NERSA's reason of decision for granting the KPS Richard's Bay generation licence	Saldanha Bay	This is commercial information, the disclosure of which would be likely to cause harm to commercial or financial interests. Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to - (i) put a third party at a disadvantage in contractual or other negotiations; or (ii) prejudice that third party in commercial competition §36(1) of PAIA
10.	KPS Saldanha Bay Generation Application	KPS Saldanha Bay Generation Application	Particulars (e.g., telephone number, email address) of the contact person – Kishoor Ptambur [pg 448] The ID/Reg Number of the current directors of KPS [pg 449] Diagram of KPS company structure [pg 451] Particulars (e.g., telephone number, email address) of the contact person – Kishoor Ptambur [pg 453] Listed Information: [pg 456 - 457] Particulars of Fuel Supplier [pg 456] Contractual Arrangements ("Response Redacted") [pg 456] Particulars of Fuel Supply Arrangements ["Redacted"] [pg 457] Maintenance Programmes and Decommissioning Costs ("Redacted") [pg 458 - 459] Customer Profile ("Redacted") [pg 460] Summary of PPA ("Redacted") [pg 461] Financial Information ("Redacted") [pg 463 - 464] Human Resources Information ["Redacted"] [pg 465- 468] Broad Based Black Economic Empowerment ("Redacted") [pg 473 - 475] Additional Information ("Redacted") [pg 476]	Personal Information This is commercial information, the disclosure of which would be likely to cause harm to commercial or financial interests. Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to - (i) put a third party at a disadvantage in contractual or other negotiations; or (ii) prejudice that third party in commercial competition Confidentiality in terms of RIMAP This is commercial information, the disclosure of which would be likely to cause harm to commercial or financial interests. Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to - (i) put a third party at a disadvantage in contractual or other negotiations; or (ii) prejudice that third party in commercial competition §34 of PAIA
11.	Supporting Documents to Saldanha Bay Application	Supporting Documents to Saldanha Bay Application	Particulars of individuals (Ravin Rajoo) - email address; personal contact number [pg 493]	Personal Information §34 of PAIA
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11.2.	Section F – Saldanha Powership Single Line Diagram	Section F – Environmental and safety permit documents		
11.3.	Section I – Environmental and safety permit documents			
11.3.1.	2020 10 19 Memo to Triplo re KPS Waste Use Licence Port of Saldanha Bay			
11.3.2.	2020 10 20 Memo to Triplo re KPS Waste Management Licence Saldanha			
11.3.3.	Coral Discharge Permit Feedback			
11.3.4.	Final Section 3B Response to Notification of Intent to Develop – HJA Gas to Power			
11.3.5.	SAAEIP – Proof of Submission			
11.3.6.	Liter from South African Heritage Resource Agency ("SAHRA") dated 12 March 2021			
11.3.7.	Water Allocation Requirements D1 Abstraction			
11.4.	SIP 20a Preferred Bidder KPS – SIP Status RMPPPPP			
12.	Duplicates:			
12.1.	Coral Discharge Permit Feedback			
12.2.	Final Section 3B Response to Notification of Intent to Develop – HJA Gas to Power			
12.3.	SAAEIP – Proof of Submission			

121. 122. 123. *BR*

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19.	Local Content Components and Exchange Rates Breakdown	537-538
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24.	Economic Development Evaluation Sheet	548-549
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27.	NERSA's reason of decision for granting the KPS Saldanha Bay generation licence	555-582

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This is commercial information, the disclosure of which would be likely to cause harm to commercial or financial interests. Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to -

(i) put a third party at a disadvantage in contractual or other negotiations; or

(ii) prejudice that third party in commercial competition

s38(1) of PAIA

Confidential under RMIAP

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B.P. M

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Cogea				
46.	KPS Cogea Generation Licence Application			
	1146-1175	Particulars (e.g., telephone number, email address) of the contact person – Kishoor Pitamber (pg 1147) The ID/Reg Number of the current directors of KPS (pg 1148) Particulars (e.g., telephone number, email address) of the contact person – Kishoor Pitamber (pg 1151) Listed information: (pg 1151 - 1172) Particulars of Fuel Supplier (pg 1154) Contractual Arrangements ("Response Redacted") (pg 1154) Particulars of Fuel Supply Arrangements ("Redacted") (pg 1154) Maintenance Programmes and Decommissioning Costs (pg 1155 - 1156) Customer Profile (pg 1157) Summary of PPA (pg 1158) Financial Information (pg 1159 - 1160) Human Resources Information (pg 1161 - 1165) Other governmental permits (pg 1166 - 1169) Broad Based Black Economic Empowerment (pg 1170) Additional Information (pg 1171 - 1172)	Personal Information Not Redacted Redacted Redacted Not Redacted Partially Redacted Redacted Redacted Not Redacted Partially Redacted Partially Redacted Not Redacted Not Redacted Not Redacted Not Redacted	§34 of PAIA §38(1) of PAIA §38(1) of PAIA
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Archived: Monday, 13 March 2023 17:52:12

From: [Tinyiko Ndlovu](#)

Sent: Thursday, 08 September 2022 14:02:25

To: [Sarah Burford](#)

Subject: FW: OUTA v NERSA & Others / TGC v NERSA & Others

Importance: Normal

Sensitivity: None

Attachments:

[Confidentiality Requests - Generation Licence Applications.pdf](#); [Redactions Analysis V2.xlsx](#);

Sorry – left you out by mistake

Tinyiko Ndlovu
Lawyer
for Pinsent Masons

D: [+27 10 493 4587](#) M: [+27 66 246 8368](#) I: [294587](#)

Winner – 'Law Firm of the Year' at the Legal Business Awards 2021

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From: Tinyiko Ndlovu

Sent: Thursday, 08 September 2022 14:02

To: kganedi@pm-attorneys.co.za

Cc: Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>; prince@pm-attorneys.co.za; dineo@pm-attorneys.co.za

Subject: RE: OUTA v NERSA & Others / TGC v NERSA & Others [PM-SA.FID46323]

Dear Kganedi

A schedule of the information our client wants to keep confidential (with reasons) is attached.

Information which is correctly redacted in the record is listed in green and information which was incorrectly disclosed and needs to still be redacted is listed in red. Information which is highlighted in orange is only partly redacted.

Our client requests that, in addition to the information listed in green, all information highlighted in red and orange be fully redacted pending agreement / direction from the DJP on the confidentiality regime. We appreciate that information which was not redacted may have already been accessed by the applicants but our client maintains the confidentiality of this information (for the reasons set out in the spreadsheet) and would appreciate it if NERSA made it clear that such information cannot be used, published or disseminated by OUTA / GC pending the finalization of a confidentiality regime and to do so would be a violation of our client's rights.

We also attach our client's confidentiality requests which were submitted as part of its electricity generation license applications to assist in identifying the confidential information. This probably goes without saying but the attached confidentiality requests cannot be shared with the applicants under any circumstances until a confidentiality regime is finalized.

Please call me or my colleague Sarah (0674184030) if anything is unclear. Thank you.

Tinyiko Ndlovu
Lawyer
for Pinsent Masons

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B-Q 

From: kganedi@pm-attorneys.co.za <kganedi@pm-attorneys.co.za>

Sent: Thursday, 08 September 2022 10:28

To: Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>; Sarah Burford <Sarah.Burford@pinsentmasons.com>

Cc: Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>;

Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>; prince@pm-attorneys.co.za; dineo@pm-attorneys.co.za

Subject: RE: [EXTERNAL] OUTA v NERSA & Others / TGC v NERSA & Others

Dear Tinyiko

Attached is what we have at our disposal.

While you are at it, kindly establish whether there is anything above and beyond what is attached that your client considers confidential information protected under the relevant pieces of legislation and provide us with a comprehensive list for the benefit of the applicants.

Please also take note the attached contains personal information on the application form that we presume your client would require to have excluded.

Kind Regards,

Kganedi Mashabathakga



Prince Mudau & Associates

ATTORNEYS, NOTARIES AND CONVEYANCERS

Tel: 010 224 0608

Direct line: 010 224 0643

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A handwritten signature in blue ink, appearing to be 'B.R. Y'.

From: Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>
Sent: Thursday, 08 September 2022 10:09 AM
To: kganedi@pm-attorneys.co.za; Sarah Burford <Sarah.Burford@pinsentmasons.com>
Cc: Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>; Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>;
 Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>; Jason Smit <Jason.Smit@Pinsentmasons.com>
Subject: RE: [EXTERNAL] OUTA v NERSA & Others / TGC v NERSA & Others

Dear Kganedi

Apologies for the delay. We are in the process of obtaining instructions from our client and will provide our response this afternoon.

Tinyiko Ndlovu
 Lawyer
 for Pinsent Masons

D: [+27 10 493 4587](tel:+27104934587) M: [+27 66 246 8368](tel:+27662468368) I: [294587](tel:+27294587)

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From: kganedi@pm-attorneys.co.za <kganedi@pm-attorneys.co.za>
Sent: Tuesday, 06 September 2022 10:27
To: Sarah Burford <Sarah.Burford@pinsentmasons.com>
Cc: Tinyiko Ndlovu <Tinyiko.Ndlovu@pinsentmasons.com>; Rob Morson (Projects) <Rob.Morson@pinsentmasons.com>;
 Andrew Fawcett <Andrew.Fawcett@pinsentmasons.com>; Nombasa Mazwai <Nombasa.Mazwai@pinsentmasons.com>
Subject: RE: [EXTERNAL] OUTA v NERSA & Others / TGC v NERSA & Others

Dear Sirs/Ms

We refer to the above.

Kindly send us a list of the redacted information that your client deems confidential for purposes of the Record as well as the case management meeting.

Kind Regards,

Kganedi Mashabathakga



Prince Mudau & Associates
 ATTORNEYS, NOTARIES AND CONVEYANCERS

Tel: 010 224 0608
 Direct line: 010 224 0643
 Fax: 086 695 0882
 P.O Box 31884 Braamfontein 2017
 Building 2 Thornhill Office Park,
 94 Bekker Street, Vorna Valley, Midrand 1685.

B-R
 y

"FAICa)"¹⁰²

Delia Turner

AA33

From: Andri Jennings
Sent: Monday, October 17, 2022 1:54 PM
To: Tinyiko Ndlovu; Andrew Fawcett; Jason Smit; Rob Morson (Projects); Nombasa Mazwai; prince@pm-attorneys.co.za; dineo@pm-attorneys.co.za; kganedi@pm-attorneys.co.za; 'Irene Kornape'; 'Zubaida'
Cc: Irene Pienaar; Delia Turner; Carol van der Vyver | Chennells Albertyn; fiona@chennellsalbertyn.co.za; Johannesburg.Litigation@dentons.com
Subject: CASE NO: 23017/2022 - ORGANISATION UNDOING TAX ABUSE NPC // THE NATIONAL ENERGY REGULATOR OF S.A 7 OTHERS and CASE NO: 23339/22 - THE GREEN CONNECTION NPC // THE NATIONAL ENERGY REGULATOR OF S.A & 5 OTHERS - OUT015
Attachments: LETTER TO NERSA AND KARPOWERSHIP 17.10.2022.pdf; Confidentiality undertaking.pdf

Good day.

Please find attached hereto a letter and attachment for your attention.

Kind Regards/Vriendelike Groete,
Andri Jennings
Director/Direkteur



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

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18 Ross Street, Cullinan | O: 012 110 4442
222 Smit Street, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572
21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 258 8770

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ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT015
YOUR REFERENCE:
DATE: 17 October 2022

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

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

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

CHENELLS ALBERTYN ATTORNEYS
(REF: 11306FB/cvdy)

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 your letter dated 2 September 2022 and in particular the aspect of the proposed confidentiality regime dealt with therein as well as the Case Management meeting held before the Honourable Ledwaba DJP on 5 September 2022, where the parties undertook to engage on the issue of confidentiality in order to attempt to move the matter forward.
2. We have further perused the letters from Messrs Chennells Albertyn and your response thereto.

B.R.

014-2

3. The confidentiality regime proposed by your client as referred to in the *Helen Suzman Foundation*¹ judgment (which was in fact granted in the *Bridon International*² case) was cited by the Constitutional Court merely as an example of where a confidentiality regime had been imposed on parties in circumstances very different from those in the present matter. In *Bridon*, the court only ordered the confidentiality regime after having weighed the conflicting interests of the parties and having found certain documentation to be confidential. One of the parties did not dictate which documents should be confidential.
4. The confidentiality regime granted in *Bridon* (and referred to in *Helen Suzman Foundation*) is an example of a very strict confidentiality regime where parties were granted access to information in the most restrictive manner possible. Such a restrictive confidentiality regime will be imposed only in very limited circumstances.
5. The circumstances that justified a restrictive confidentiality regime in *Bridon* are not present here. In fact, your client has at no stage provided any justification as to why any of the information in the record should be kept confidential. Our client's requests in this regard have throughout been met with vague, general statements about confidentiality and an ill-conceived notion that Karpowership can dictate the terms under which the record is to be provided.
6. There is further no reason why we should be precluded from sharing the record with our client and the experts to discuss it, take instructions and prepare expert reports. The confidentiality regime proposed by your client would prevent us from doing so.

¹ Helen Suzman Foundation v Judicial Services Commission 2018 (4) SA 1 (CC)

² Bridon International GmbH v International Trade Administration Commission and Others 2013 (3) SA 197 (SCA)

7. Our client will therefore not agree to such a strict and unjustified confidentiality regime as proposed by your client. However, in the spirit of finding a practical and reasonable solution to move the matter forward, we propose a confidentiality regime similar to the one that was agreed to by the parties in Cape Town City v South Africa National Roads Authority and Others 2015 (3) SA 386 (SCA).
8. We propose an agreement between the parties on the terms as set out in 8.1 to 8.5 below:
 - 8.1 NERSA will provide OUTA's legal representatives with copies of the documents forming part of the Rule 53 record which NERSA and/or Karpowership claim to be confidential. Such representatives will sign the attached confidentiality undertaking which prevents them from using or disclosing the documents except for purposes of the litigation in question, and then only in a manner agreed between the parties or in accordance with any directions by a judge or a court.
 - 8.2 A list of names of OUTA's representatives and experts involved in the matter is contained in the attached confidentiality undertaking. OUTA's legal representatives may disclose the record to these listed individuals, subject to them also signing the confidentiality undertaking. Should OUTA at a later stage need to appoint further experts (other than those listed), or involve other representatives from OUTA, the documents may be disclosed to such experts and/or representatives, subject to them also signing the attached confidentiality undertaking.
 - 8.3 OUTA will then prepare its supplementary founding affidavit as envisaged by Rule 53 and any expert reports it may deem necessary, using any documents contained in the record that it regards as relevant

to the application, and may place such affidavit and expert report(s) with the relevant documents from the record attached thereto before the Court hearing the review application.

- 8.4 Prior to the filing at court of the supplementary founding affidavit and any expert reports OUTA wishes to rely on in the review application, OUTA will first serve copies thereof on the parties' respective attorneys and will provide the parties ten (10) days from date of service to object to any information or documents contained therein being disclosed as part of public proceedings on the grounds of confidentiality. Any objections on the grounds of confidentiality must be accompanied by reasons for such alleged confidentiality.
- 8.5 If the parties cannot agree whether a particular document or part thereof that forms part of or is referred to in OUTA's supplementary founding affidavit and/or expert report(s) and to which objection has been made as set out in 8.4 above, should be dealt with publicly in open court or on a closed basis, the parties will approach a judge or the court to decide the question at a preliminary hearing. Any such preliminary hearing will be closed, and the parties and the judge or court hearing the matter will be able to have sight of and refer to copies of the contested documents. The parties will endeavour to agree suitable dates and arrangements for any such hearing.
- 8.6 OUTA records that at this stage it does not concede the validity of any claim to confidentiality.
9. In addition to the practical benefits of the proposal, we believe it will also prevent possible unnecessary litigation. For example, your client may consider that certain information in the record is confidential, but OUTA may consider such information not relevant to the application and accordingly not use it in the supplementary

founding affidavit. Potential disputes about such information are then automatically resolved without the need for protracted arguments about its disclosure in court proceedings.

10. Please note that our client remains of the view that the record should not be treated as confidential and that the *onus* to prove that a document is confidential and may not be used in open court remains on the party alleging such confidentiality. There can be no automatic assumption of confidentiality. However, the above proposal is made to allay any concerns your client and NERSA may have about confidentiality and allow the matter to move forward without the need for costly interlocutory applications before the record has even been filed.
11. Please note that the proposal is made with prejudice. Should your client and NERSA not be amenable to the proposal and continue to withhold the complete record unless our client agrees to the restrictive and unwarranted confidentiality regime that your client wishes to impose, our client will have no alternative but to institute an application to compel the provision of the complete record. In such an event this letter will be included in the application.
12. Kindly revert with your client's response by close of business on 26 October 2022, failing which we will instruct counsel to proceed with the drafting of an application to compel the record together with the appropriate request for costs against NERSA and Karpowership.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,
Andri Jennings
Director

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Date: **09/04/2021**

Department of Mineral Resources and Energy c/o the IPP Office
Bylsbridge Office Park
Building 9
Cnr Jean and Olievenhoutbosch Avenue
Centurion
South Africa

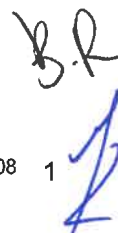
Dear Sirs

**THE REPUBLIC OF SOUTH AFRICA - DEPARTMENT OF MINERAL RESOURCES ENERGY
TENDER NO: DMRE/001/2020/21**

**FOR: NEW GENERATION CAPACITY UNDER THE RISK MITIGATION IPP PROCUREMENT
PROGRAMME ("RISK MITIGATION IPP PROCUREMENT PROGRAMME") – PREFERRED
BIDDER PROJECT DEVELOPMENT UNDERTAKING FOR KARPOWERSHIP SA COEGA
PROJECT**

1. Introduction

- 1.1 Pursuant to the Risk Mitigation Independent Power Producer ("IPP") procurement programme as defined under the Electricity Regulations on New Generation Capacity published under GNR 399 in Government Gazette 34262 of 4 May 2011 as amended, in terms of section 35(4) of the Electricity Regulation Act, 2006 ("IPP Programme"), the Department of Mineral Resources and Energy ("the Department") issued the RFP to which the Bidder responded as a Bidder and submitted a Bid Response. Such Bid Response was successful and the Department is prepared to award the status of Preferred Bidder to the Bidder on the terms and conditions of this Preferred Bidder Project Development Undertaking ("this Undertaking", which includes all appendices attached hereto).
- 1.2 It is a requirement for the appointment of the Preferred Bidder to become effective that the Preferred Bidder provides the Department with this Undertaking.



- 1.3 This Undertaking is the "**PB PD Undertaking**" referred to in the RFP and which, pursuant to the RFP, the Department requires that all Preferred Bidders should provide upon their appointment as Preferred Bidders.

2. Interpretation

- 2.1 Unless inconsistent with the context, terms used in this Undertaking with capitalised initial letters, and not otherwise defined herein, shall have the meaning ascribed thereto in the RFP, the PPA or IA, and the following terms shall have the following meanings:

"**Business Day**" has the meaning given to it in the PPA

"**Commercial Close**" has the meaning given to it in the RFP;

"**Financial Close**" has the meaning given to it in the RFP;

"**Independent Engineer**" has the meaning given to it in the PPA;

"**Preferred Bidder Default**" means a breach of this Undertaking as detailed in clause 10 (*Occurrence and consequences of a Preferred Bidder Default*);

"**Preferred Bidder Letter**" means the letter issued by the Department to the Bidder, informing the Bidder that, upon completion, signature and delivery of this Undertaking, the Bidder will be appointed as a Preferred Bidder, which letter is attached hereto as Appendix 1;


"**Progress Report**" has the meaning given to it in clause 5.2;

"**Project**" means the Project (as defined in the PPA) in respect of which the Preferred Bidder submitted its Bid Response;

"**Project Development Plan**" means the project development programme setting out the milestones to be achieved by the Preferred Bidder during the term of this Undertaking up to the achievement of Commercial Close and Financial Close, which programme is attached hereto as Appendix 2;

"**Signature Date**" means the date on which this Undertaking is signed by the Bidder; and

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"Term" means the term of this Undertaking as detailed in clause 3 (*Commencement and Term*).

2.2 In this Undertaking, except where the context otherwise requires:

- 2.2.1 the index and headings of clauses of this Undertaking are for ease of reference only and shall be ignored in the interpretation and application of this Undertaking;
- 2.2.2 words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders;
- 2.2.3 references to any Recital, clause or paragraph are to those contained in this Undertaking;
- 2.2.4 unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa;
- 2.2.5 **"person"** includes a corporation, company, firm, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of any of the foregoing that is recognised by Law as the subject of rights and duties, and references to a **"person"** (or to a word incorporating a person) shall be construed so as to include that person's successors in title and permitted assigns or permitted transferees;
- 2.2.6 in computation of periods of time from a specified day to a later specified day, **"from"** means from and including and **"until"** or **"to"** means to and including;
- 2.2.7 **"include"**, **"including"** and **"in particular"** shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The words **"other"** and **"otherwise"** shall not be construed so as to be limited or defined by any preceding words, where a wider construction is possible;
- 2.2.8 references to a **"Party"**, the **"Preferred Bidder"**, the **"the Department"** or the **"Buyer"** shall include its successors and permitted assignees;
- 2.2.9 references to this Undertaking or any other document shall be construed as references to this Undertaking or that other document as amended, varied, novated, supplemented or replaced from time to time;



- 2.2.10 references to legislation include any statute, by-law, regulation, rule, subordinate legislation or delegated legislation or order, and a reference to any legislation is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it;
- 2.2.11 the terms "**hereof**", "**herein**", "**hereunder**" and similar words refer to this entire Undertaking and not to any particular clause or paragraph or any other subdivision of this Undertaking;
- 2.2.12 the rule of construction that, in the event of ambiguity, a provision shall be interpreted against the Party responsible for drafting thereof, shall not apply in the interpretation of this Undertaking;
- 2.2.13 the expiration or termination of this Undertaking shall not affect such of the provisions of this Undertaking as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that these provisions do not expressly state this; and
- 2.2.14 if any provision in clause 2.1 is a substantive provision conferring rights or imposing obligations on the Bidder then, notwithstanding that such provision is contained in such clause, the effect shall be given thereto as if such provision were a substantive provision in the body of this Undertaking.

3. Commencement and Term

This Undertaking shall commence on the Signature Date and terminate upon the earlier of Commercial Close or its termination by the Department in terms of clause 10.2.2.

4. Appointment of the Preferred Bidder and Preferred Bidder Guarantee

- 4.1 The Department hereby appoints the Bidder as a Preferred Bidder on the terms of this Undertaking, as read and implemented together with the RFP and the Preferred Bidder Letter. For the avoidance of doubt, the RFP shall continue to apply to the Preferred Bidder, who shall be required to continue to comply with the terms and requirements of the RFP.
- 4.2 Simultaneously with the submission to the Department of this Undertaking, the Preferred Bidder shall provide the Department with:

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- 4.2.1 the original Preferred Bidder Guarantee, a copy of which is attached to this Undertaking as Appendix 4. The provisions of clause 24.2 (*Preferred Bidder Guarantee*) of Part A (*General Requirements, Rules and Provisions*) of the RFP shall continue to be applicable to all aspects, circumstances and events in respect of the Preferred Bidder Guarantee; and
- 4.2.2 Proof of payment of the Preferred Bidder Fee. The amount of the Preferred Bidder Fee is set out in the invoice issued to the Preferred Bidder.

5. Implementation of the Project Development Plan and reporting to the Department

- 5.1 The Preferred Bidder undertakes that it will carry out the activities (the "**Project Development Activities**"):
- 5.1.1 set out in the first column of the table contained in Part A of Appendix 3 of this Undertaking, to achieve completion of each activity by the date stipulated for same in the second column of the table contained in Part A of Appendix 3 to this Undertaking; and
- 5.1.2 the activities in the Project Development Plan, in order to achieve Commercial and Financial Close by not later than the date specified as the date for the achievement of such Commercial and Financial Close in Project Development Plan. Details of the milestones to be achieved by the Preferred Bidder in accordance with the Project Development Plan have been specifically included in Appendix 2 of this Undertaking and the Preferred Bidder shall be required to achieve these milestones.
- 5.2 The Preferred Bidder must submit a level 3 (three) Project Development Plan gantt chart at monthly resolution to show key activities, events, dependencies and milestones from the date of appointment as a Preferred Bidder in order to achieve Commercial and Financial Close as required in clause 5.24 (*Technical Qualification Criterion 4.11: Project Schedule*) of Volume 3 (*Technical Requirements*) Part 1 (*Technical Qualification Criteria*) of Part B (*Functional and Qualification Criteria Requirements*) of the RFP. This Project Development Plan shall be attached to this Undertaking as Appendix 2 (*Project Development Plan*). In particular, the Project Development Plan shall show as a minimum the following milestones:

- 5.2.1 all necessary land agreements executed and registered at the Deeds Office and all necessary Land Use Consents obtained (including any post community engagement, if applicable);
 - 5.2.2 securing contractual rights to the capacity within the relevant Port from Transnet National Ports Authority in respect of the Facility and or the Fuel Supply arrangements, if applicable;
 - 5.2.3 all necessary Environmental Consents obtained, including any transfers of Environmental Consents to the Project Company;
 - 5.2.4 all appeals and or reviews of any Environmental Consents settled;
 - 5.2.5 Fuel Supply Agreement, if applicable, executed;
 - 5.2.6 Key Equipment Supply Agreement executed;
 - 5.2.7 Water Supply Agreement, if applicable, executed;
 - 5.2.8 Distribution or Transmission Connection Agreement, executed;
 - 5.2.9 submission of the application for the Generation Licence to NERSA;
 - 5.2.10 Generation Licence (NERSA) obtained;
 - 5.2.11 Grid Code Compliance Study completed;
 - 5.2.12 Construction Contractor appointed;
 - 5.2.13 O&M Contractor appointed; and
 - 5.2.14 Independent Engineer appointed.
- 5.3 The Preferred Bidder shall be required to report to the Department as detailed in this clause 5.3 and Appendix 3 (*Progress Reports*) of this Undertaking, at regular intervals and at least on a monthly basis during the term of this Undertaking, the first of such periods commencing on the day on which the Preferred Bidder is announced as such. Accordingly, the Preferred Bidder shall, on the last Business Day of each month, provide the Department with a detailed, accurate written report (which shall comply with the requirements of Appendix 3 (*Progress Reports*) of this Undertaking) of what progress it has made in that period towards the achievement of Commercial and Financial Close ("**Progress Report**"). Such Progress Report must state whether or

not the progress detailed in the Project Development Plan to be achieved in respect of the relevant calendar month, has in actuality been achieved. The Progress Report is required to be accurate in all respects and to be a comprehensive and detailed report of progress in respect of the Project. If the requisite progress has not been achieved in respect of that calendar month, the Preferred Bidder must provide the Department with a detailed plan which specifies what steps and actions will be taken by the Preferred Bidder to ensure that it still achieves Commercial and Financial Close by the original date specified in the Project Development Plan for the achievement of Commercial and Financial Close ("**Rectification Plan**"). The Preferred Bidder shall implement in the Rectification Plan and, in the next Progress Report, shall state what actions and steps it has taken to implement the Rectification Plan and the extent to which that implementation has succeeded.

- 5.4 The Progress Report must be submitted in the form of both a written report and a gantt chart. Both the written report and the gantt chart must specifically address all the items set out in Appendix 3 (*Progress Reports*) of this Undertaking, as well as Legal Criterion 2 (*Confirmation of the PB PD Undertaking, the PPA, the Implementation Agreement, Direct Agreement, the Independent Engineer Agreement and the Connection Agreements and submission of Returnable Schedules*), clause 2.2.3.3 of Volume 2 (*Legal Requirements*) Part 1 (*Legal Qualification Criteria*) of Part B (*Functional and Qualification Criteria Requirements*) of the RFP, Technical Qualification Criterion 4.11 (*Project Schedule*) of Volume 3 (*Technical Requirements*) Part 1 (*Technical Qualification Criteria and Evaluation*), and the relevant Qualification Criteria contained in Volume 4 (*Financial Requirements*) and Volume 5 (*Economic Development Requirements*) of Part B (*Functional and Qualification Criteria Requirements*) of the RFP in detail. If the detail contained in the Progress Report in respect of any item in Legal Criterion 2 (*Confirmation of the PB PD Undertaking, the PPA, the Implementation Agreement, Direct Agreement, the Independent Engineer Agreement and the Connection Agreements and submission of Returnable Schedules*), clause 2.2.3.3 of Volume 2 (*Legal Requirements*) Part 1 (*Legal Qualification Criteria*) of Part B (*Functional and Qualification Criteria Requirements*) of the RFP, Technical Qualification Criterion 4.11 (*Project Schedule*) of Volume 3 (*Technical Requirements*) Part 1 (*Technical Qualification Criteria and Evaluation*) of Part B (*Functional and Qualification Criteria Requirements*) of the RFP, and the relevant Qualification Criteria contained in Volume 4 (*Financial Requirements*) and Volume 5 (*Economic Development Requirements*) of the RFP is, in the Department's reasonable opinion, insufficient or inadequate or is inaccurate in any way, the

Department may reject the Progress Report and require the Preferred Bidder to rework the Project Report and resubmit it.

- 5.5 The Preferred Bidder shall provide the Department with copies of the documentation and information set out in Part B (Commercial Close Documentation and Information) of Appendix 3, Appendix 5 and the specific Environmental Consents listed in Appendix 6, on such dates for delivery of such documentation or information as may be notified by the Department to the Preferred Bidder from time to time.
- 5.6 The Department shall be entitled, but not obliged, to raise any concerns in relation to the documents and or information submitted by a Preferred Bidder to the Department in terms of clause 5.5. The Department shall, at its sole discretion, notify the Preferred Bidder of any such concerns.
- 5.7 The Preferred Bidder shall have committed a Preferred Bidder Default if:
- 5.7.1 it issues a Progress Report which indicates that it is 2 (two) or more calendar months behind in the Project Development Plan in respect of the development of the Project;
- 5.7.2 it fails to submit a Progress Report that meets with all the requirements detailed in clauses 5.2 and 5.4 on 2 (two) occasions; and or
- 5.7.3 it fails to submit any of the information and or documentation required as detailed in clause 5.5 by the prescribed date.
- 5.8 If the Preferred Bidder anticipates that it will achieve Commercial Close earlier than the date specified as the date for such achievement in the Project Development Plan, it shall give the Department not less than 2 (two) calendar months' written advance notice of the date on which it shall be able to achieve such Commercial Close. The Department, acting reasonably, will consider whether it and the Buyer are willing to permit the earlier achievement of Commercial Close in respect of the Project, and will notify the Preferred Bidder in writing whether they are willing to permit such earlier achievement on the proposed date for such achievement, within 20 (twenty) Business Days of receipt by the Department of the notice from the Preferred Bidder.

6. Grid Code Compliance Study

- 6.1 During the design phase of the Project prior to the signature of the PPA and the Implementation Agreement and the achievement of Commercial Close, the Preferred

Bidder shall undertake a code compliance study of each Facility and its connection to the System ("**Grid Code Compliance Study**") in order to ascertain whether or not the Facility and the Facility Connection Works as designed by the Preferred Bidder comply with requirements and standards of the Codes. The ultimate responsibility for compliance with the Codes will be borne solely by the Seller. The compliance of each Facility with the Codes shall be assessed in accordance with the provisions of the PPA.

- 6.2 The Preferred Bidder shall deliver a hard copy and a soft copy of the Grid Code Compliance Study to each of the Department and the Buyer, within 10 (ten) Business Days of its completion and not less than 40 (forty) Business Days before the anticipated date of Commercial Close.
- 6.3 The Department shall have no liabilities, obligations or duties to the Preferred Bidder in respect of the ability of the Facility to connect to the System and to dispatch Energy Output.

7. Changes to the Preferred Bidder's Bid Response and Charge Rates

- 7.1 As detailed in clause 20 (*Legal Personality of Bidder and its Members and Changes to Bid Responses*) of Part A (*General Requirements, Rules and Provisions*) of the RFP, the Preferred Bidder must obtain the prior written consent of the Department in respect of any changes to the Project from the details contained in its Bid Response. If the Preferred Bidder intends replacing any of its selected Contractors, Lenders or Suppliers with another entity, the prior written consent of the Department to such replacement shall not be required if the entity proposed to replace the current Contractor, Suppliers and or Lenders was included in the Preferred Bidder's Bid Response as one of possible appointees by the Preferred Bidder for the relevant role. In such instances, the Preferred Bidder shall give the Department prior written notice of the replacement. In all other instances, the Preferred Bidder undertakes to comply with these requirements of the RFP and, when asking for such consent, to provide the Department with a written explanation motivating its request for such changes. The Department shall notify the Preferred Bidder whether or not it consents to such changes within 5 (five) Business Days of the request for consent.
- 7.2 No liability, obligations or duties shall attach to the Department as a result of granting any consent in terms of clause 7.1.

- 7.3 The Preferred Bidder agrees that the Charge Rates specified in Table 4.1 (*Table A.1 - Values of various charge rates detailed in Appendix 6D (Agreed Values for Payment Calculations) of Schedule 9 (Calculation of Payments) of the PPA at the Base Date) of Volume 6 (PPA and IA Tables) of Part B (Functional and Qualification Criteria Requirements) of the RFP*, of its Bid Response may not be revised, amended or changed in any way, except as expressly and unequivocally permitted in the RFP and then only to the extent that is expressly and unequivocally permitted in the RFP or as requested by the Department. The Preferred Bidder undertakes not to attempt to or to revise, amend or change in any way the Charge Rates specified in its Bid Response, except to the extent expressly and unequivocally permitted in the RFP or as requested by the Department.

8. Technical Compliance

- 8.1 Preferred Bidders shall be required to undertake their Projects in accordance with the contents of their Bid Responses upon which they were appointed as Preferred Bidders and that, more specifically, they shall comply with and develop their Projects in accordance with the technical proposals submitted in their Bid Responses.
- 8.2 Where a Preferred Bidder had not yet selected its Key Equipment Supplier or Contractors for its Project at the relevant Bid Submission Date, the Preferred Bidder undertakes that:
- 8.2.1 the final selection of such Contractors and or Suppliers will not change any of the proposed performance and design data for the Project; and
- 8.2.2 the Key Equipment supplied by such Suppliers for the purposes of the Project will comply with the Qualification Criteria set out in clause 5.7 of Volume 3 (*Technical Requirements*) Part 1 (*Technical Qualification Criteria*) of Part B (*Functional and Qualification Criteria Requirements*) of the RFP.
- 8.3 If a Preferred Bidder wishes to deviate and or make any changes to the technical proposal that it submitted in its Bid Response, the Preferred Bidder must obtain the consent of the Department in respect of any such changes. The Preferred Bidder undertakes, when asking for such consent, to provide the Department with a written explanation for such changes. The Department shall notify the Preferred Bidder whether or not it consents to such changes within 15 (fifteen) Business Days of the request for consent.



8.4 No liability, obligations or duties shall attach to the Department as a result of granting any consent in terms of clause 8.2.

8.5 The Preferred Bidder agrees that the technical proposal for its Project as submitted in its Bid Response may not be revised, amended or changed in any way, except as expressly consented thereto by the Department.

9. Appointment of the Independent Engineer

9.1 The Preferred Bidder shall, as soon as practicably possible after the appointment as a Preferred Bidder, engage with the Buyer to identify five (5) independent consulting engineers from the list of Independent Engineers submitted by the Preferred Bidder in its Bid Response to the Department in accordance with Appendix 6B (*Table 2: Table for the purposes of Schedule 4 (List of Firms - Independent Engineer) of the PPA*) of Volume 6 (*PPA and IA Tables*) of Part B (*Functional and Qualification Criteria Requirements*) of the RFP, every one of which they approve to be appointed as the Independent Engineer for the purpose of this Undertaking and the PPA, and every one of which the Preferred Bidder warrants:

9.1.1 has at least 7 (seven) years professional experience as an engineer in the energy generation industry; and

9.1.2 as at the date of appointment of Preferred Bidders, has not rendered services to the Preferred Bidder, any of its shareholders (direct or indirect), Contractors or Lenders or any Affiliate of any of them in respect of the Project.

9.2 Thereafter, the Preferred Bidder shall engage with any (or all) of such firms with a view to 1 (one) of them being appointed as the Independent Engineer on terms substantially similar to the terms contained in the agreement set out in Schedule 7 (*Independent Engineer Agreement*) of the PPA.

9.3 The Preferred Bidder shall keep the Buyer regularly informed of its progress towards the appointment of the Independent Engineer in accordance with the provisions of clause 5.2 above, and shall be responsible for arranging for the signing of the agreement when it contains all the terms and conditions that have been agreed between the Preferred Bidder, the Buyer and the Independent Engineer for the conditional appointment.

9.4 The Independent Engineer shall be appointed at the sole cost and expense of the Seller, but shall act on behalf of, and owe a duty of care to, both the Buyer and the

Preferred Bidder equally. The continued appointment of the Independent Engineer is subject to the Preferred Bidder and the Buyer entering into the PPA at Commercial Close. Therefore, if the Buyer and the Preferred Bidder do not enter into the PPA at Commercial Close, the Independent Engineer's appointment shall be terminated accordingly.

10. Occurrence and consequences of Preferred Bidder Default

10.1 A Preferred Bidder Default shall have occurred if:

- 10.1.1 any event that is specifically designated as a Preferred Bidder Default in any other provision of this Undertaking occurs;
- 10.1.2 the Preferred Bidder breaches the provisions of this Undertaking, including the provisions of clause 7.1, more than once and the Department has given the Preferred Bidder an initial warning notice describing the breach in reasonable detail and stating that if the breach persists or recurs then the Department may take further steps to terminate this Undertaking and the Department has issued a second and final warning notice following the persistence or recurrence of that breach in the period of 30 (thirty) days after the initial warning notice, stating that if that breach persists or recurs within the period of 30 (thirty) days after the final warning notice then the Department may exercise its rights in terms of clause 10.2 of this Undertaking;
- 10.1.3 the Preferred Bidder breaches clause 7.3;
- 10.1.4 the Preferred Bidder repudiates this Undertaking or any of its obligations in terms of this Undertaking or rejects its status as Preferred Bidder or abandons the Project before Commercial Close;
- 10.1.5 the Preferred Bidder fails to achieve Commercial Close on the date specified in the Project Development Plan as the date on which it will achieve Commercial Close; or
- 10.1.6 the Preferred Bidder breaches any other material provisions (including any of clauses 4.2, 7.1 or 7.3) of this Undertaking.

10.2 If a Preferred Bidder Default occurs, the Department shall be entitled to:

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- 10.2.1 deliver to the Preferred Bidder a notice in writing notifying the Preferred Bidder that a Preferred Bidder Default has occurred and stating which any one or more of the following actions the Department is taking;
- 10.2.2 terminate the appointment of the Bidder as a Preferred Bidder, in which case notice shall specify the effective date of such termination which shall not be less than 10 (ten) Business Days from the date of the notice; and or
- 10.2.3 claim its costs, damages and losses that it has and will occur as a result of the appointment of the Bidder as a Preferred Bidder, the cancellation of such appointment and the fact that Commercial Close will not be achieved in respect of the Project; and or
- 10.2.4 enforce the Preferred Bidder Guarantee.

11. Cession and Delegation or Transfer of this Undertaking

The Bidder may not delegate or transfer any of its obligations under this Undertaking.

12. Representations and Warranties

The Preferred Bidder represents and warrants to the Department as on the Signature Date and on each day thereafter during the Term, as follows:

- 12.1 it has the right, power and authority to enter into this Undertaking and to perform its obligations hereunder by all the Members of the Bidder; and
- 12.2 the execution and performance of this Undertaking by it has been duly authorised by all necessary corporate action, and its obligations hereunder constitute valid, binding and enforceable obligations.

13. Governing Law and Jurisdiction

- 13.1 This Undertaking is governed by the laws of South Africa.
- 13.2 Subject to the provisions of clause 28 (*Dispute Resolution*) of the PPA (which are incorporated herein by reference, *mutatis mutandis*), the Bidder agrees that the High Court of South Africa, Gauteng Division, Pretoria shall have non-exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Undertaking and irrevocably submit to the jurisdiction of such court.



14. Miscellaneous

14.1 No amendment or variation

This Undertaking may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except with the prior written consent of the Department.

14.2 Waiver

14.2.1 The failure of the Department or the Bidder to exercise any right or remedy shall not constitute a waiver thereof.

14.2.2 No waiver shall be effective unless it is communicated in writing by the Department and or the Bidder to one another.

14.2.3 No waiver of any right or remedy arising from a breach of this Undertaking shall constitute a waiver of any right or remedy arising from any other breach of this Undertaking.

14.3 Third parties

The Bidder intends that the terms and conditions of this Undertaking shall be solely for the benefit of the Department and the Bidder and shall not confer any rights upon any other third parties.

14.4 Counterparts

This Undertaking may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same undertaking.

14.5 Entire Undertaking

14.5.1 This Undertaking together with the RFP contains the whole undertaking to be given by the Bidder in respect of the subject matter hereof and supersedes any prior written or oral agreement between the Department and the Bidder.

14.5.2 The Bidder acknowledges and agrees that it is not entering into this Undertaking in reliance on, and shall have no right of action against the Department in respect of, any assurance, promise, undertaking, representation or warranty



made by the Department at any time prior to the date of this Undertaking, unless it is expressly set out in this Undertaking.

14.6 Further assurances

The Bidder agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts as may be necessary or appropriate to carry out the purposes and intent of this Undertaking.

14.7 Language

This Undertaking is made only in the English language. Each document referred to in this Undertaking or to be delivered under it shall be in the English language.

14.8 Severability

If any provision of this Undertaking is held by a court or other Responsible Authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from this Undertaking and shall be of no force and effect and this Undertaking shall remain in full force and effect as if such provision had not originally been contained in this Undertaking. In the event of any such deletion the Bidder shall negotiate with the Department in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

15. Confidentiality

The restrictions of clause 32 (*Confidentiality*) of the PPA shall apply *mutatis mutandis* to the Preferred Bidder.

16. Notices

16.1 Unless otherwise provided by the Bidder in this Undertaking, all notices, requests, statements and other communications required or permitted in terms of this Undertaking shall be in writing and either hand-delivered or sent by pre-paid registered post or facsimile to the Bidder at the address or number set out in clause 16.3 below.

16.2 No communication shall be effective until received by the Bidder and a communication shall be deemed to have been received:

- 16.2.1 if delivered by hand during ordinary business hours, to its physical address in clause 16.3, when so delivered;
- 16.2.2 if delivered by pre-paid registered post, to its postal address in clause 16.3, 7 (seven) Business Days after posting, subject to proof of posting; and
- 16.2.3 if delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses 16.2.1 or 16.2.2 above.

- 16.3 The Preferred Bidder chooses as its postal and physical addresses and contact details set out below:

Postal Address: PO Box 619 Pretoria, Gauteng, 001

Physical Address: 164 Totius Street, Groenkloof, Pretoria, Gauteng, 0027

Attention: **Mr. Mehmet Katmer**

Fax No.: +90 212 295 4743

Tel No.: +90 532 642 9657

- 16.4 The Preferred Bidder chooses the physical address set out above as its *domicilium citandi et executandi* for all purposes of and in connection with this Undertaking. Notwithstanding anything to the contrary herein, a written legal notice or process actually received by the Preferred Bidder shall be an adequate written notice or process, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

The Preferred Bidder may by written notice to the Department change its nominated physical or postal address to another physical or postal address, as the case may be, in South Africa (and not in any other country) or its contact details by giving at least fifteen (15) days' prior written notice to the Department.

Yours faithfully

Signed: _____



Name: **Mehmet Katmer**

Designation: **Director**

For and on behalf of **Karpowership SA (Pty) Ltd**

Who warrants his or her authority hereto



Appendix 1

Preferred Bidder Letter

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Appendix 2

Project Development Plan

[The Preferred Bidder is to provide a detailed Project Development Plan, complying with the requirements of the RFP and the PB PD Undertaking.]

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Appendix 3**Project Development Activities, Milestone Dates and Reporting Intervals****PART A - Project Development Milestones and Reporting Intervals**

PROJECT DEVELOPMENT ACTIVITIES	MILESTONE ACHIEVEMENT DATE	REPORTING INTERVAL
1. Submission to the Department of the signed PB PD Undertaking and the Preferred Bidder Guarantee.	Within 15 (fifteen) days after receipt of the Preferred Bidder Letter.	Not Applicable.
2. Submission to NERSA of an application for a generation licence.	Within 15 (fifteen) days after submission to the Department of the signed PB PD Undertaking.	In accordance with clause [5.2] of the PB PD Undertaking.
3. Granting by NERSA of the generation licence.	Prior to Commercial Close.	Status to be reported to the Department 3 (three) months after Submission to the Department of the signed PB PD Undertaking, and thereafter on a quarterly basis.
4. Application to Eskom for Budget Quote and payment of the Budget Quotation fee.	Within 15 (fifteen) days after submission to the Department of the signed PB PD Undertaking.	In accordance with clause [5.6] of the PB PD Undertaking.
5. Issuing by Eskom of the Eskom Budget Quote.	Prior to Commercial Close.	Status to be reported to the Department 3 (three) months after Submission

		to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.
6. Fulfilment of the Preferred Bidders Conditions set out in Appendix 5	Prior to Commercial Close	Status to be reported to the Department within a 1 (one) month after submission to the Department of the signed PB PD Undertaking, and thereafter on a monthly basis at the end of every month.
7. Appointment of the Independent Engineer.	Prior to Commercial Close.	Preferred Bidder to submit a list of not less than 5 (five) independent consulting engineers within 15 (fifteen) days after submission to the Department of the signed PB PD Undertaking.
8. Incorporation and registration of the Project Company and finalisation of its constitutional documents.	Prior to Commercial Close.	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter on a quarterly basis.
9. Negotiation and finalisation of: 9.1 the Shareholders Agreement, equity subscription and equity funding agreements;	Prior to Commercial Close.	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD

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<p>9.2 the Construction Contract ;</p> <p>9.3 the O&M Contract;</p> <p>9.4 the Fuel Supply Agreement, if required;</p> <p>9.5 the Key Equipment Supply Agreement and</p> <p>9.6 the Water Supply Agreement (if required).</p>		Undertaking, and thereafter at the end of every month.
<p>10. Obtaining all Land Use Consents, information and or documentation, including, but not limited to, the following:</p> <p>10.1 the execution of all necessary land agreements and the registration of same at the Deeds Office;</p> <p>10.2 the fulfilment of all conditions recorded against the title deeds of the property; and</p> <p>10.3 other relevant information.</p>	Prior to Commercial Close.	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.
<p>11. Submission of Integrated Water Use Licence application.</p>	Within 15 (fifteen) days after submission to the Department of the signed PB PD Undertaking.	In accordance with clause [5.6] of the PB PD Undertaking.
<p>12. Obtaining all Environmental Consents, information and or documentation, including, but not limited to, the following:</p> <p>12.1 the specific Environmental Consents listed in Appendix 6;</p> <p>12.2 approval of outstanding layout, construction EMP and other plans in terms of the NEMA environmental authorisation (or the equivalent thereof as required by former</p>	Prior to Commercial Close.	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.

<p>environmental laws) and or the waste management licence, if required;</p> <p>12.3 Integrated Water Use Licence, as well as approval of any plans and programmes which may be required;</p> <p>12.4 GN R704 exemptions, if applicable;</p> <p>12.5 approvals in terms of sections 6 and or 7 of the Water Services Act, 108 of 1997, if applicable;</p> <p>12.6 provisional atmospheric emission licence, in terms of the NEMAQA;</p> <p>12.7 biodiversity and or conservation permits, in terms of the NEMBA, if applicable;</p> <p>12.8 the biodiversity off-set programme, if applicable;</p> <p>12.9 protected tree licences, in terms of the NFA, if applicable;</p> <p>12.10 biodiversity and or conservation permits, in terms of the CARA, if applicable;</p> <p>12.11 biodiversity and or conservation permits, in terms of other applicable provincial laws, if applicable;</p> <p>12.12 heritage approvals in terms of the NHRA, and if applicable, Phase II mitigation permits and other heritage approvals;</p> <p>12.13 heritage approvals in terms of other applicable provincial laws, and if applicable, Phase II mitigation permits and other heritage approvals;</p> <p>12.14 dam safety licence and registration certificates in terms of the NWA (or</p>		
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<p>the equivalent thereof as required by former water laws, including registration for waste water treatment works), if applicable; and</p> <p>12.15 such Municipal consents, as are applicable.</p>		
<p>13. Resolution or settlement of any appeals and or reviews which may have been lodged or instituted against a decision to grant any Environmental Consent for the Project.</p>	<p>Prior to Commercial Close.</p>	<p>Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.</p> <p>Status of the climate change impact assessment that is being undertaken if required to be reported to the Department at the end of every month after submission to the Department of the signed PB PD Undertaking.</p> <p>Status of any other appeals and or reviews to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.</p>

14. Obtaining licenses in respect of the supply of Fuel and any storage or pipeline infrastructure in respect of Fuel for the Project, in respect of each Facility forming part of the Project	Prior to Commercial Close	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.
15. Compiling a baseline risk assessment specifically in relation to the Project, together with a list of policies or procedures or safe work practices which will be established to deal with the hazards and risks identified in the baseline risk assessment	Prior to Commercial Close	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.
16. Ensure compliance with the appointment and competency requirements in the MHSA, if applicable	Prior to Commercial Close	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.
17. Establishing a training system, specifically in relation to the training of employees conducting work at the Project.	Prior to Commercial Close	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.
18. Obtaining a baseline risk assessment in terms of the Occupational Health and Safety Act No. 85 of 1993 (OSHA)	Prior to Commercial Close	Status to be reported to the Department 3 (three) months after submission

relation to the Construction and Operation of the Project together with a list of policies or procedures or safe work practices which will be established to deal with the hazards and risks identified in the baseline risk assessment.		to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.
19. Obtaining all permits required to be obtained in terms of the OSHA, as amended, together with all Regulations thereto in order for construction of the Facility to commence and to ensure compliance with the Construction Regulations of 2014.	Prior to Commercial Close	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.
20. Negotiation and finalisation of Financing Agreements, including: 20.1 completion of any and all due diligence investigations and studies performed on the instructions of the Lenders; 20.2 process for completion of financial model and associated sensitivities; 20.3 finalisation of hedging strategies; 20.4 credit committee approvals process; 20.5 finalisation of financial model audit.	Prior to Commercial Close.	Status to be reported to the Department 3 (three) months after submission to the Department of the signed PB PD Undertaking, and thereafter at the end of every month.



Appendix 3**Project Development Activities, Milestone Dates and Reporting Intervals****PART B – Commercial Close Documentation and Information**



DOCUMENTATION / INFORMATION	DATE OF DELIVERY
1. The constitutional documents of the Project Company.	At least 1 (one) month prior to the proposed date for Commercial Close
2. Fully developed and agreed Project Documents, including, but not limited to: 2.1 the Shareholders Agreement, equity subscription and equity funding agreements; 2.2 the Construction Contract ; 2.3 the O&M Contract; 2.4 the Fuel Supply Agreement, if required; 2.5 the Key Equipment Supply Agreement and 2.6 the Water Supply Agreement (if required).	At least 1 (one) month prior to the proposed date for Commercial Close
3. Fully developed, negotiated and agreed contracts with Transnet National Ports Authority for purposes of securing capacity for the Facility/Project and or the Fuel Supply arrangements within the relevant Port, if applicable;	At least 1 (one) month prior to the proposed date for Commercial Close
4. All outstanding Land Use Consents, information and or documentation.	At least 1 (one) month prior to the proposed date for Commercial Close
5. All outstanding Environmental Consents, information and or documentation, including, but not limited to, the applicable consents, permits, licences and approvals referred to in item 12 of the table contained in Part A above.	At least 1 (one) month prior to the proposed date for Commercial Close

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6. Proof of settlement of any appeals and or reviews which may have been lodged or instituted against a decision to grant any Environmental Consent for the Project.	At least 1 (one) month prior to the proposed date for Commercial Close
7. Establishing the Rehabilitation Trust and or the issuing of the Decommissioning Cost Bank Guarantee.	At least 1 (one) month prior to the proposed date for Commercial Close in the case of the Rehabilitation Trust and at Commercial Close in the case of the Decommissioning Cost Bank Guarantee
8. In respect of OSHA the applicable documentation and information referred to in item 19 of the table contained in Part A above.	[At least 1 (one) month prior to the proposed date for Commercial Close]
9. The NERSA generation licence.	[At least 1 (one) month prior to the proposed date for Commercial Close]
10. The Eskom Budget Quote.	[At least 1 (one) month prior to the proposed date for Commercial Close]
11. Completion of any and all due diligence investigations and studies required by the Lenders.	[At least 1 (one) month prior to the proposed date for Commercial Close]
12. The Financial Model to be attached to the Implementation Agreement.	[At least 1 (one) month prior to the proposed date for Commercial Close]
13. Finalisation of hedging strategies.	[At least 1 (one) month prior to the proposed date for Commercial Close]
14. Credit committee approvals process.	[At least 1 (one) month prior to the proposed date for Commercial Close]

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15. Finalisation of financial model audit.	[At least 1 (one) month prior to the proposed date for Commercial Close]
16. The Grid Code Compliance Study pursuant to clause 6 of this Undertaking.	[At least 1 (one) month prior to the proposed date for Commercial Close]
17. All applicable and outstanding technical documents and drawings in respect of the Project.	[At least 1 (one) month prior to the proposed date for Commercial Close]
18. The Independent Engineer Agreement.	[At least 1 (one) month prior to the proposed date for Commercial Close]

Appendix 4

Preferred Bidder Guarantee
FORM OF PREFERRED BIDDER GUARANTEE

[To be submitted on the letterhead of the issuing institution]

By: ***[insert name of issuer of the Preferred Bidder Guarantee]***

In favour of: The Department of Mineral Resources and Energy of the Government of the Republic of South Africa.

Terms with initial capital letters, unless otherwise defined herein, have the meanings given to them in the RFP.

WHEREAS the Department of Mineral Resources and Energy of the Government of the Republic of South Africa ("**the Department**") has issued a Request for Qualifications and Proposals ("**RFP**") in respect of the finance, construction, operation, and maintenance of Dispatchable energy generation Projects for the purpose of entering into, inter alia, an Implementation Agreement with the Department and a Power Purchase Agreement with the Buyer.

AND WHEREAS pursuant to the RFP, the Department has selected ***[insert the names of each Member of the Preferred Bidder consortium, or the name of the Project Company]*** ("**Preferred Bidder**") as a Preferred Bidder in the Risk Mitigation IPP Procurement Programme;

AND WHEREAS the Department requires the Preferred Bidder to provide an on demand guarantee in favour of the Department in the amount of ***[insert amount of Bid Guarantee]*** ("**Guarantee Amount**") to secure certain undertakings or obligations of the Preferred Bidder under the RFP, in terms of clause 24.2 (*Preferred Bidder Guarantee*) of Part A (*General Requirements, Rules and Provisions*) of the RFP;

AND WHEREAS we, ***[insert name of guarantor institution]*** ("**Bank / [Insurer (substitute throughout if applicable)]**") have agreed to issue this guarantee to secure such undertakings and obligations of the Preferred Bidder ("**Preferred Bidder Guarantee**").

NOW THEREFORE

1. the Bank, duly represented by _____ being duly authorised to sign this Preferred Bidder Guarantee, hereby irrevocably and unconditionally guarantees and as a primary obligation undertakes to pay the Department without objection or argument amounts not exceeding in aggregate the Guarantee Amount, such payment(s)

to be made by the Bank upon first written demand by the Department being received at the Bank's counter, situated at [●], attention [●], declaring that the Preferred Bidder has:

- 1.1 breached any law relating to the Risk Mitigation IPP Procurement Programme or been disqualified from any part of the Risk Mitigation IPP Procurement Programme as a result of its actions or omissions;
 - 1.2 failed to comply timeously with any conditions contained in the letter of appointment as a Preferred Bidder;
 - 1.3 failed to pay the budget quotation fee within the time period specified by the Department in the RFP or in the letter of appointment as Preferred Bidder;
 - 1.4 failed to sign the PB PD Undertaking, PPA, Implementation Agreement, Direct Agreement and the Connection Agreements within the time period specified in clause 12 (*Timetable of Risk Mitigation IPP Procurement Programme*) of Part A (*General Requirements, Rules and Provisions*) of the RFP in respect of the relevant Bid Submission Phase, as such time period may be extended by the Department on written notice to the Preferred Bidder;
 - 1.5 having signed the PB PD Undertaking, PPA, Implementation Agreement, Direct Agreement and the Connection Agreements, failed to pay the Development Fee in accordance with clause 2.1 of the Implementation Agreement or failed to comply with the requirements of any information or documentation request, or of any protocol issued by the Department including in relation to the submission to the Department of the computer model which is to be attached to the Implementation Agreement as Schedule 4 (*Financial Model*) following Commercial Close;
 - 1.6 failed to extend the term of the Preferred Bidder Guarantee as required by the RFP;
or
 - 1.7 been notified by the Department that its status as Preferred Bidder has been revoked for any reason.
2. More than 1 (one) demand may be made under this Preferred Bidder Guarantee, provided that the aggregate amount payable shall not exceed the Guarantee Amount.
 3. Payment of the amounts so demanded will be made without set-off or deduction to the following account, or such other account as the Department may notify the Bank in writing:

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Bank: Nedbank

Account Name: GTAC - IPP

Account Type: Current

Account: 1068872608

Branch: Corporate Client Services, Johannesburg

Branch code: 198765

SWIFT Code: NEDSZAJJ

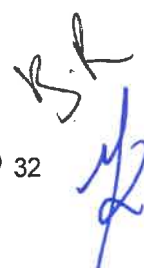
4. This Preferred Bidder Guarantee shall be valid and effective from the date of its issue until the earlier of (a) the expiry of the Bid Validity Period (as it may be extended in terms of the RFP); and (b) the later of the date of payment of the Development Fee in accordance with clause 2.1 of the Implementation Agreement, and the date on which the Preferred Bidder complies with the requirements of any protocol issued by the Department in relation to the submission to the Department of the computer model which is to be attached to the Implementation Agreement as Schedule 4 (*Financial Model*), following Commercial Close, provided that once Commercial Close has been reached on the Preferred Bidder's Project, item (a) no longer applies and this Preferred Bidder Guarantee shall remain valid until the later of the events described in item (b) hereof.
5. The Preferred Bidder Guarantee shall remain valid during the period described above notwithstanding the Bidder's insolvency, winding-up, liquidation, business rescue, dissolution or deregistration, whether provisionally or finally.
6. Notwithstanding the above provisions, this Preferred Bidder Guarantee shall terminate and be returned to the Bank within 15 (fifteen) Business Days of payment of an amount or amounts which, in aggregate, equal the Guarantee Amount, or of expiry of Preferred Bidder Guarantee as set out above.
7. This Preferred Bidder Guarantee shall be governed by the laws of the Republic of South Africa, and the parties hereto consent and submit for the benefit of the Department to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

Signature of Representative

Date: _____

Signature of Representative

Date: _____

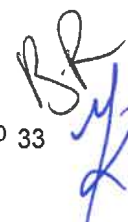


Appendix 5

Conditions to Appointment as Preferred Bidder

The Preferred Bidder will have to demonstrate compliance with the conditions below to the satisfaction of the Department in its sole discretion. The Preferred Bidder will have to demonstrate compliance with the conditions below at least one month prior to Commercial Close. The conditions below are to be read together with the Letter of Appointment attached as Appendix 1 (Preferred Bidder Letter) to this Undertaking.

Condition	Timeline for Submission
<p><u>Tax Compliance</u></p> <p>By accepting its appointment as a Preferred Bidder, the Bidder acknowledges and agrees that the Bidder will be required to provide evidence to the satisfaction of the Department that the Project Company, its Members and Shareholders, that are South African entities, have no outstanding tax obligations to SARS or have made arrangements with SARS to settle any outstanding tax obligations, prior to the signature of the PPA and the Implementation Agreement.</p>	On or before Commercial Close
<p><u>Shared Port Infrastructure</u></p> <p>As there are two Preferred Bidders to be appointed in the Port of Ngqura who intend to establish LNG infrastructure in the Port of Ngqura, the Department requires that you engage with and jointly co-operate with the other Preferred Bidder to jointly find solutions to optimise the LNG infrastructure in the Port of Ngqura. The benefit of such optimisation to be reflected through a revision of the relevant elements of the Charge Rates. Such co-operation is however subject to the provisions of the RFP.</p>	On or before Commercial Close



Appendix 6**Preferred Bidder Environmental Consents****(a) Outstanding Key Environmental Consents:**

- the Gas Facility Environmental Authorisation Application (DEFF Ref: 14/12/16/3/3/2/2005);

(b) Other permits required/potentially required in terms of the legal opinion:

- provisional atmospheric emission licence or an atmospheric emission licence, as the case may be, in terms of the National Environmental Management: Air Quality Act No. 39 of 2004;
- biodiversity and or conservation permits, in terms of the National Environmental Management: Biodiversity Act No. 10 of 2004 and any applicable provincial laws;
- protected tree licences, in terms of the National Forests Act No. 84 of 1998;
- written approval from the South African Civil Aviation Authority for consent in terms of the Civil Aviation Act, 2009 to erect a potential obstacle to aviation;
- relevant permits and certificates in terms of municipal by-laws;
- permits, certificates and notifications in terms of the Occupational Health and Safety Act, 1993, including registration with the local authority as a major hazard installation in terms of the Major Hazard Installation Regulations, 2001, in respect of both facilities; and
- pollution safety certificate in terms of section 24 of the National Environmental Management: Integrated Coastal Management Act No. 24 of 2008.

