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IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 23017/2022

In the matter between:-

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

APPLICANT

and

THE NATIONAL ENERGY REGULATOR OF  
SOUTH AFRICA

FIRST RESPONDENT

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

SECOND RESPONDENT

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

THIRD RESPONDENT

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

FOURTH RESPONDENT

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

FIFTH RESPONDENT

IN RE: THE MAIN REVIEW APPLICATION BETWEEN:

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

APPLICANT

and

THE NATIONAL ENERGY REGULATOR OF  
SOUTH AFRICA

FIRST RESPONDENT

42

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

**SECOND RESPONDENT**

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

**THIRD RESPONDENT**

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

**FOURTH RESPONDENT**

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

**FIFTH RESPONDENT**

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

**SIXTH RESPONDENT**

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

**SEVENTH RESPONDENT**

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

**EIGHTH RESPONDENT**

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**REPLY TO NOTICE IN TERMS OF RULE 35(12) AND (14)**

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**KINDLY TAKE NOTICE THAT** that the First Respondent hereby replies to the Applicant's Notice in Terms of Rule 35(12) and (14) by filing herewith the following:

1. Form A: Request for Treatment of Confidential Information
2. Determination: Request for Treatment of Confidential Information

**DATED AT MIDRAND ON THIS THE 09<sup>TH</sup> DAY OF MAY 2023.**

  
\_\_\_\_\_  
**PRINCE MUDAU AND ASSOCIATES**  
**ATTORNEYS FOR FIRST RESPONDENT**

42

Thornhill Office Park, Building 2  
94 Bekker Road, Vorna Valley  
Midrand  
Tel: 010 224 0608  
Fax: 086 695 0882  
Email: [kganedi@pm-attorneys.co.za](mailto:kganedi@pm-attorneys.co.za)  
[prince@pm-attorneys.co.za](mailto:prince@pm-attorneys.co.za)  
[dineo@pm-attorneys.co.za](mailto:dineo@pm-attorneys.co.za)  
[irene@pm-attorneys.co.za](mailto:irene@pm-attorneys.co.za)

Ref: LIT/PM/MAT180

**C/O DABISHI NTHAMBELENI INC**

Eco Fusion 6  
300 Witch-Hazel Street  
Highveld Ext 59  
Centurion  
0144  
Ref: LIT/PM/MAT180

**TO: THE REGISTRAR OF THE ABOVE  
HONOURABLE COURT**

**AND TO: JENNINGS INCORPORATED  
ATTORNEYS FOR THE APPLICANT**  
149 Anderson Street  
Brooklyn, Pretoria  
Tel: (012) 110 4442  
Email: [andri@jinc.co.za](mailto:andri@jinc.co.za); [delia@jinc.co.za](mailto:delia@jinc.co.za)  
Ref: A JENNINGS/OUT015

**SERVICE BY EMAIL**

**AND TO: PINSENT MASONS SOUTH AFRICA INC  
ATTORNEYS FOR THE SECOND TO FIFTH RESPONDENT**



9<sup>th</sup> Floor  
61 St Katherine Street  
Sandton  
Johannesburg  
2196  
Tel: 010 493 4603  
Fax: 010 493 4611  
Email: [Jason.Smit@pinsentmasons.com](mailto:Jason.Smit@pinsentmasons.com)  
[Andrew.Fawcett@pinsentmasons.com](mailto:Andrew.Fawcett@pinsentmasons.com)  
[Tinyiko.Ndlovu@pinsentmasons.com](mailto:Tinyiko.Ndlovu@pinsentmasons.com)  
[Sarah.Burford@pinsentmasons.com](mailto:Sarah.Burford@pinsentmasons.com)  
Ref: 691335.07000

**SERVICE BY EMAIL**

Handwritten signature and initials in the bottom right corner of the page.



**REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION  
SUBMITTED TO THE ENERGY REGULATOR**

**Instructions:**

1. This form must be used for all requests for confidential treatment of information submitted to the Energy Regulator.
2. Please note that this form has five sections (A, B, C, D & E).
3. All requests must be based on and substantiated in terms of the relevant provisions of:
  - the Electricity Regulation Act, 2006 (Act No.4 of 2006); and/or
  - the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
4. All requests must be accompanied by a detailed motivation supporting the request.
5. You must clearly indicate and highlight which information in your submission(s) is confidential as the Energy Regulator will not accept general claims of confidentiality of entire documents.
6. All information submitted to the Energy Regulator without this request shall be treated as non-confidential and will be made available to the public.
7. The completed form with supporting documentation must be delivered to the Energy Regulator:
  - by registered mail to: P O Box 40343, Arcadia 0007;
  - OR**
  - by hand at: Kulawula House, 526 Vermeulen Street, Arcadia, Pretoria.

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**Official Use Only**

Date received: \_\_\_\_\_

Reference number: \_\_\_\_\_

40

**SECTION A: PARTICULARS OF THE PARTY MAKING THE REQUEST FOR  
CONFIDENTIAL TREATMENT OF INFORMATION**

1. Name Karpowership SA Coega (Pty) Ltd
2. Telephone number [REDACTED]
3. Fax number [REDACTED]
4. E-mail address [REDACTED]
5. Details of mandated representative, including:
  - (a) designation Director
  - (b) family name Katmer
  - (c) first name Mehmet
  - (d) telephone number [REDACTED]
  - (e) fax number [REDACTED]
  - (f) email address [REDACTED]

**SECTION B: PARTICULARS REGARDING THE TYPE OF SUBMISSION**

The request for confidential treatment of information is with regards to (tick the appropriate box below):

- |   |                                     |
|---|-------------------------------------|
| A licence application                                 | <input type="checkbox"/>            |
| An application for an amendment of a licence          | <input type="checkbox"/>            |
| An application for the revocation of a licence        | <input type="checkbox"/>            |
| An application for the registration of a gas activity | <input type="checkbox"/>            |
| An objection to a licence application                 | <input type="checkbox"/>            |
| A complaint in terms of section 31 of the Act         | <input type="checkbox"/>            |
| A tariff application                                  | <input type="checkbox"/>            |
| Other (specify)                                       | <input checked="" type="checkbox"/> |

Record of decision.....  
.....  
.....  
.....

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**SECTION C: DETAILS OF THE CONFIDENTIALITY REQUEST**

On separate sheets of paper, list the following information regarding each piece of information:

Column 1	The name of the document that contains the information considered to be confidential
Column 2	The page number, paragraph number and line number at which the confidential information begins and ends
Column 3	Facts and evidence supporting the request for confidential treatment of information identified in column 2
Column 4	The nature of the economic value of the information
Column 5	The applicable sections of the Electricity Regulation Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

**SECTION D: ORAL REPRESENTATIONS TO THE ENERGY REGULATOR**

Indicate your wish to orally present your request to the Energy Regulator: YES ☐

NO ☒

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The applicant, Karpowership SA Coega (Pty) Ltd submitted an application for an electricity generation licence in terms of the Electricity Regulation Act, 2006 (Act No.4 of 2006). The licence was granted on 28 September 2021.

The applicant hereby informs NERSA that the following information contained in the Decision and Record of Decision is of a commercially sensitive nature in terms of the provisions of the Promotion of Access to Information Act, 2000 ("PAIA") and therefore should not be made available for public inspection:-

Name of document / Information	Where confidential information begins and ends (including page references within overall bundle)	Facts and evidence supporting the request	Applicable sections of legislation
Decision	Table 1 (on the first page of the decision) showing tariff charge rates	<p>This constitutes competitive and/or commercial information.</p> <p>It is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition.</p>	Section 36(1) of PAIA
Record of decision	<p>Table 6 (at paragraph 51) showing project funding</p> <p>Paragraph 52</p> <p>Paragraph 52</p> <p>Paragraph 53</p> <p>Paragraph 59</p> <p>Paragraph 60</p> <p>Paragraph 61</p> <p>Paragraph 62</p> <p>Table 8 (at paragraph 66) showing tariff charge rates</p> <p>In paragraph 68: Reference to "14% equity"</p>	<p>This constitutes competitive and/or commercial information.</p> <p>It is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition.</p>	Section 36(1) of PAIA

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	<p>and "This accounts to 90% of the tariff".</p> <p>Paragraph 74 and Table 9</p> <p>Paragraph 96</p>		
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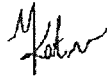
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**SECTION E: SOLEMN DECLARATION BY REQUESTER/ MANDATED REPRESENTATIVE**

I, Mehmet Katmer, with Turkish Passport Number [REDACTED] hereby declare that:

- (a) I am authorised by Karpowership SA Coega Proprietary Limited to make this declaration; and
- (b) All information provided herein is within my personal knowledge and is both true and correct.



.....  
**Signature**

I certify that the deponent:

- (a) has acknowledged that he knows and understands the contents of this application form and its annexures, that he has no objection to taking the prescribed oath and that he considers the oath binding on his conscience; and
- (b) has in the prescribed manner sworn that the contents of this application form and its annexures are true and signed same before me at ..... on this ..... day of ..... (year) .....

\_\_\_\_\_  
**COMMISSIONER OF OATHS**

Name \_\_\_\_\_

Address \_\_\_\_\_

Capacity \_\_\_\_\_



National Energy Regulator  
4th Floor, Kulawula House  
526 Vermeulen Street  
Arcadia  
Pretoria  
Attention: HoD Licensing, Compliance and Dispute Resolution

20 April 2021

Dear Mr Tshepo Ramokoka

**SUBMISSION OF ADDITIONAL INFORMATION AND CONFIDENTIAL INFORMATION – APPLICATION FOR AN ELECTRICITY GENERATION LICENCE IN TERMS OF THE ELECTRICITY REGULATION ACT, 2006 (ACT NO. 4 OF 2006) – KARPOWERSHIP SA COEGA (RF) PROPRIETARY LIMITED**

Further to the letter received from NERSA entitled "Acknowledgement of Receipt of a Generation Licence Application from Karpowership SA Coega (RF) (Pty) Ltd" dated 20 April 2021, please find enclosed with this letter the financial model, the financial model summary, the financial model manual and financial model audit opinion.

The Applicant hereby informs the NESRA that the following information submitted as part of this generation licence application is confidential information in line with the Promotion of Administrative Justice Act and Promotion of Access to Information Act ("PAIA") that should not be made available for public inspection:-

<u>Name of document</u>	<u>Where confidential info begins and ends</u>	<u>Facts and evidence supporting the request</u>	<u>Applicable sections of legislation</u>
Financial Model	Entire Financial Model submitted under cover of this letter, including the excel spreadsheet, the detailed manual and the financial model summary	Section contains commercial information of a third party that is confidential.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA  Section 36(1) of PAIA
Financial Model Audit Opinion	The Financial Model Audit Opinion submitted under cover of this letter	Section contains commercial information of a third party that is confidential.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA  Section 36(1) of PAIA

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The Applicant previously submitted the below confidentiality request with the application for a generation licence submitted to NERSA in hard copy on 4 April 2021 and soft copy on 13 April 2021. The Application hereby reaffirms that the following information submitted as part of the generation licence application is confidential information in line with the Promotion of Administrative Justice Act and PAIA that should not be made available for public inspection:

<b><u>Name of document</u></b>  (Note: 'TOC' refers to Table of Contents to supporting documents)	<b><u>Where confidential info begins and ends</u></b>	<b><u>Facts and evidence supporting the request</u></b>	<b><u>Applicable sections of legislation</u></b>
Generation Licence Application Form - Coega	Entirety of 'Section D: Particulars of Long Term Arrangements with Primary Energy Supplier'	Contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 2 TOC):  'Section D – KPS RSA GSA Term Sheet - (Fuel Co - Coega) 13.12.2020'	Entire document	Contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Coega	Entirety of 'Section E: Maintenance Programmes and Decommissioning Costs'	Section contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Coega	Entirety of 'Section G: Financial Information'	Information contained is commercial information that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 7 TOC):  'Section G Annex - I – Coega'	Entire document	Financial Statements attached to application contains revenues and costs and other financial information that is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA  Section 36(1) of PAIA



Generation Licence Application Form - Coega	Entirety of 'Section F: Customer Profile'	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 3 TOC):  'Section F – Connection Agreement PROFORMA 24.11.2020'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 4 TOC):  'Section F - RMIPP RFP - Power Purchase Agreement'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 5 TOC):  'Section F CEL - Coega Powership 450MW 25 Nov 2020'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Coega	Entirety of 'Section H: Human Resources Information'	Information is commercial information of a third party and is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 8 TOC):  'Section H - Job Creation Table Operating Measurement Period'	Entire document	Information is commercial information of a third party and is confidential.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Coega	Entirety of 'Section J: Broad Based Black Economic Empowerment'	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA

42

Supporting documents (item 15 TOC):  'Section J – BBEE Appendices - Coega'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 10 TOC):  'Section J – Coega Ownership Bid Response'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 11 TOC):  'Section J – Coega Skills Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 12 TOC):  'Section J – Coega Management Control Bid Response'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 13 TOC):  'Section J - Coega 5.3.3.6.6 V5P3C4.6.3.1 Supplier Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 12 TOC):  'Section J - Coega 5.3.3.6.9 V5P3C4.6.4.1 Enterprise Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA

Handwritten signature and initials.



SA COEGA (RF) PROPRIETARY LIMITED

Generation Licence Application Form - Coega	Entirety of 'Section K – Additional Information'	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 13 TOC):  'Section K – Letter of Appointment'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA

Yours sincerely,

David Clark

Attorney-in-fact

Karpowership SA Coega (RF) Proprietary Limited

42

National Energy Regulator  
4th Floor, Kulawula House  
526 Vermeulen Street  
Arcadia  
Pretoria  
Attention: HoD Licensing, Compliance and Dispute Resolution

31 May 2021

Dear Sirs

**SUBMISSION OF ADDITIONAL INFORMATION AND CONFIDENTIAL INFORMATION – APPLICATION FOR AN ELECTRICITY GENERATION LICENCE IN TERMS OF THE ELECTRICITY REGULATION ACT, 2006 (ACT NO. 4 OF 2006) – KARPOWERSHIP SA COEGA (RF) PROPRIETARY LIMITED**

Further to the meeting held between NERSA and the Applicant on 24 May 2021, the Applicant has prepared an updated generation licence application that has been amended in accordance with NERSA's directions. The amendments are described in the cover letter to the updated application. This amended application form replaces the application form previously submitted, but should be read with the supporting documents / annexures submitted with the previous application, as these remain valid.

The Applicant hereby informs the NERSA that the following information submitted as part of this amended generation licence application is confidential information in line with the Promotion of Administrative Justice Act and Promotion of Access to Information Act ("PAIA") that should not be made available for public inspection:-

<u>Name of document</u>	<u>Where confidential info begins and ends</u>	<u>Facts and evidence supporting the request</u>	<u>Applicable sections of legislation</u>
The tender returnable schedules (Volume 6 – PPA and IA Tables) that formed part of the Applicant's bid submission to be awarded preferred bidder status and which have been submitted as part of Section F of the amended application form	Annexure A to the amended application form submitted herewith	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA

Further to the letter received from NERSA entitled "Acknowledgement of Receipt of a Generation Licence Application from Karpowership SA Coega (RF) (Pty) Ltd" dated 20 April 2021, please find enclosed with this letter the financial model, the financial model summary, the financial model manual and financial model audit opinion.

Handwritten signature and initials.



The Applicant hereby informs the NERSA that the following information submitted as part of this generation licence application is confidential information in line with the Promotion of Administrative Justice Act and Promotion of Access to Information Act ("PAIA") that should not be made available for public inspection:-

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Financial Model Audit Opinion	The Financial Model Audit Opinion submitted under cover of this letter	Section contains commercial information of a third party that is confidential.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA  Section 36(1) of PAIA

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<u>Name of document</u>	<u>Where confidential info begins and ends</u>	<u>Facts and evidence supporting the request</u>	<u>Applicable sections of legislation</u>
(Note: 'TOC' refers to Table of Contents to supporting documents)			
Generation Licence Application Form - Coega	Entirety of 'Section D: Particulars of Long Term Arrangements with Primary Energy Supplier'	Contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (Item 2 TOC):  'Section D – KPS RSA GSA Term Sheet - (Fuel Co - Coega) 13.12.2020'	Entire document	Contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA

40

Generation Licence Application Form - Coega	Entirety of 'Section E: Maintenance Programmes and Decommissioning Costs'	Section contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Coega	Entirety of 'Section G: Financial Information'	Information contained is commercial information that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 7 TOC):  'Section G Annex - I - Coega'	Entire document	Financial Statements attached to application contains revenues and costs and other financial information that is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Coega	Entirety of 'Section F: Customer Profile'	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 3 TOC):  'Section F - Connection Agreement PROFORMA 24.11.2020'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 4 TOC):  'Section F - RMIPP RFP - Power Purchase Agreement'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 5 TOC):  'Section F CEL - Coega Powership'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA

42

450MW 25 Nov 2020'			
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Supporting documents (item 8 TOC):  'Section H - Job Creation Table Operating Measurement Period'	Entire document	Information is commercial information of a third party and is confidential.  This is competitive information and should not be divulged.	Chapter 4 PAIA Section 36(1) of PAIA
Generation Licence Application Form - Coega	Entirety of 'Section J: Broad Based Black Economic Empowerment'	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA Section 36(1) of PAIA
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Supporting documents (Item 10 TOC):  'Section J – Coega Ownership Bid Response'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 11 TOC):  'Section J – Coega Skills Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 12 TOC):	Entire document	Information is commercial information and is confidential in accordance with the rules of the	Chapter 4 PAIA

4/2

'Section J – Coega Management Control Bid Response'		Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Section 36(1) of PAIA
Supporting documents (item 13 TOC):  'Section J - Coega 5.3.3.6.6 V5P3C4.6.3.1 Supplier Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
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Generation Licence Application Form - Coega	Entirety of 'Section K – Additional Information'	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
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Yours faithfully,

Karpowership SA Coega (RF) (Pty) Ltd

National Energy Regulator  
4th Floor, Kulawula House  
526 Vermeulen Street  
Arcadia  
Pretoria  
Attention: HoD Licensing, Compliance and Dispute Resolution

31 May 2021

Dear Sirs

**SUBMISSION OF ADDITIONAL INFORMATION AND CONFIDENTIAL INFORMATION REQUEST – APPLICATION FOR AN ELECTRICITY GENERATION LICENCE IN TERMS OF THE ELECTRICITY REGULATION ACT, 2006 (ACT NO. 4 OF 2006) – KARPOWERSHIP SA RICHARDS BAY (RF) PROPRIETARY LIMITED**

Further to the meeting held between NERSA and the Applicant on 24 May 2021, the Applicant has prepared an updated generation licence application that has been amended in accordance with NERSA's directions. The amendments are described in the cover letter to the updated application. This amended application form replaces the application form previously submitted, but should be read with the supporting documents / annexures submitted with the previous application, as these remain valid.

The Applicant hereby informs the NERSA that the following information submitted as part of this amended generation licence application is confidential information in line with the Promotion of Administrative Justice Act and Promotion of Access to Information Act ("PAIA") that should not be made available for public inspection:-

<b><u>Name of document</u></b>	<b><u>Where confidential info begins and ends</u></b>	<b><u>Facts and evidence supporting the request</u></b>	<b><u>Applicable sections of legislation</u></b>
The tender returnable schedules (Volume 6 – PPA and IA Tables) that formed part of the Applicant's bid submission to be awarded preferred bidder status and which have been submitted as part of Section F of the amended application form	Annexure A to the amended application form submitted herewith	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA

Further to the letter received from NERSA entitled "Acknowledgement of Receipt of a Generation Licence Application from Karpowership SA Richards Bay (RF) (Pty) Ltd" dated 20 April 2021, please find enclosed with this letter the financial model, the financial model summary, the financial model manual and financial model audit opinion.

The Applicant hereby informs the NERSA that the following information submitted as part of this generation licence application is confidential information in line with the Promotion of

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Administrative Justice Act and Promotion of Access to Information Act ("PAIA") that should not be made available for public inspection:-

<u>Name of document</u>	<u>Where confidential info begins and ends</u>	<u>Facts and evidence supporting the request</u>	<u>Applicable sections of legislation</u>
Financial Model	Entire Financial Model submitted under cover of this letter, including the excel spreadsheet, the detailed manual and the financial model summary	Section contains commercial information of a third party that is confidential.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA  Section 36(1) of PAIA
Financial Model Audit Opinion	The Financial Model Audit Opinion submitted under cover of this letter	Section contains commercial information of a third party that is confidential.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA  Section 36(1) of PAIA

The Applicant previously submitted the below confidentiality request with the application for a generation licence submitted to NERSA in hard copy on 4 April 2021 and soft copy on 13 April 2021. The Application hereby reaffirms that the following information submitted as part of the generation licence application is confidential information in line with the Promotion of Administrative Justice Act and PAIA that should not be made available for public inspection:

<u>Name of document</u>  (Note: 'TOC' refers to Table of Contents to supporting documents)	<u>Where confidential info begins and ends</u>	<u>Facts and evidence supporting the request</u>	<u>Applicable sections of legislation</u>
Generation Licence Application Form – Richards Bay	Entirety of 'Section D: Particulars of Long Term Arrangements with Primary Energy Supplier'	Section contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (Item 2 TOC):  'Section D – KPS RSA GSA Term Sheet - (Fuel Co - Richards Bay) 13.12.2020'	Entire document	Contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA

42

Generation Licence Application Form - Richards Bay	Entirety of 'Section E: Maintenance Programmes and Decommissioning Costs'	Section contains commercial information of a third party that is confidential.	Chapter 4 PAIA Section 36(1) of PAIA
Generation Licence Application Form - Richards Bay	Entirety of 'Section G: Financial Information'	Information contained is commercial information that is confidential.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 7 TOC):  'Section G Annex - II - RBay'	Entire document	Financial Statements attached to application contains revenues and costs and other financial information that is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA Section 36(1) of PAIA
Generation Licence Application Form - Richards Bay	Entirety of 'Section F: Customer Profile'	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 3 TOC):  'Section F – Transmission Agreement (PROFORMA) 25.11.2020'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 4 TOC):  'Section F - CEL 04-11-2020'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 6 TOC):  'Section F - RMIPP RFP - Power Purchase Agreement'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA Section 36(1) of PAIA

42

Generation Licence Application Form - Richards Bay	Entirety of 'Section H: Human Resources Information'	Information is commercial information of a third party and is confidential.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 8 TOC):  'Section H - Job Creation Table Operating Measurement Period'	Entire document	Information is commercial information of a third party and is confidential.  This is competitive information and should not be divulged.	Chapter 4 PAIA Section 36(1) of PAIA
Generation Licence Application Form - Richards Bay	Entirety of 'Section J: Broad Based Black Economic Empowerment'	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 10 TOC):  'Section J - BBBEE Appendices - Richards Bay'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 11 TOC):  'Section J - Ownership Bid Response'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA Section 36(1) of PAIA
Supporting documents (item 13 TOC):  'Section J - Skills Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA Section 36(1) of PAIA

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Supporting documents (Item 12 TOC):  'Section J – Management Control Bid Response'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 14 TOC):  'Section J - Supplier Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 15 TOC):  'Section J - Enterprise Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Richards Bay	Entirety of 'Section K – Additional Information'	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 13 TOC):  'Section K – Letter of Appointment'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA

Yours faithfully,

KARPOWERSHIP SA RICHARDS BAY (RF) PROPRIETARY LIMITED

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**REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION  
SUBMITTED TO THE ENERGY REGULATOR**

**Instructions:**

1. This form must be used for all requests for confidential treatment of information submitted to the Energy Regulator.
2. Please note that this form has five sections (A, B, C, D & E).
3. All requests must be based on and substantiated in terms of the relevant provisions of:
  - the Electricity Regulation Act, 2006 (Act No.4 of 2006); and/or
  - the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
4. All requests must be accompanied by a detailed motivation supporting the request.
5. You must clearly indicate and highlight which information in your submission(s) is confidential as the Energy Regulator will not accept general claims of confidentiality of entire documents.
6. All information submitted to the Energy Regulator without this request shall be treated as non-confidential and will be made available to the public.
7. The completed form with supporting documentation must be delivered to the Energy Regulator:
  - by registered mail to: P O Box 40343, Arcadia 0007;
  - OR**
  - by hand at: Kulawula House, 526 Vermeulen Street, Arcadia, Pretoria.

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**Official Use Only**

Date received: \_\_\_\_\_

Reference number: \_\_\_\_\_

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**SECTION A: PARTICULARS OF THE PARTY MAKING THE REQUEST FOR  
CONFIDENTIAL TREATMENT OF INFORMATION**

1. Name Karpowership SA Saldanha Bay (Pty) Ltd

2. Telephone number [REDACTED]

3. Fax number [REDACTED]

4. E-mail address [REDACTED]

5. Details of mandated representative, including:

(a) designation Director

(b) family name Katmer

(c) first name Mehmet

(d) telephone number [REDACTED]

(e) fax number [REDACTED]

(f) email address [REDACTED]

**SECTION B: PARTICULARS REGARDING THE TYPE OF SUBMISSION**

The request for confidential treatment of information is with regards to (tick the appropriate box below):

A licence application

☐

An application for an amendment of a licence

☐

An application for the revocation of a licence

☐

An application for the registration of a gas activity

☐

An objection to a licence application

☐

A complaint in terms of section 31 of the Act

☐

A tariff application

☐

Other (specify)

☒

Record of decision.....

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.....

.....

.....

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**SECTION C: DETAILS OF THE CONFIDENTIALITY REQUEST**

On separate sheets of paper, list the following information regarding each piece of information:

Column 1	The name of the document that contains the information considered to be confidential
Column 2	The page number, paragraph number and line number at which the confidential information begins and ends
Column 3	Facts and evidence supporting the request for confidential treatment of information identified in column 2
Column 4	The nature of the economic value of the information
Column 5	The applicable sections of the Electricity Regulation Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

**SECTION D: ORAL REPRESENTATIONS TO THE ENERGY REGULATOR**

Indicate your wish to orally present your request to the Energy Regulator: YES ☐

NO ☒

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The applicant, Karpowership SA Saldanha Bay (Pty) Ltd submitted an application for an electricity generation licence in terms of the Electricity Regulation Act, 2006 (Act No.4 of 2006). The licence was granted on 28 September 2021.

The applicant hereby informs NERSA that the following information contained in the Decision and Record of Decision is of a commercially sensitive nature in terms of the provisions of the Promotion of Access to Information Act, 2000 ("PAIA") and therefore should not be made available for public inspection:-

Name of document / Information	Where confidential information begins and ends (including page references within overall bundle)	Facts and evidence supporting the request	Applicable sections of legislation
Decision	Table 1 (on the first page of the decision) showing tariff charge rates	<p>This constitutes competitive and/or commercial information.</p> <p>It is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition.</p>	Section 36(1) of PAIA
Record of decision	<p>Table 6 (at paragraph 51) showing project funding</p> <p>Paragraph 51</p> <p>Paragraph 52</p> <p>Paragraph 53 and Table 7</p> <p>Paragraph 59</p> <p>Paragraph 60</p> <p>Paragraph 61</p> <p>Paragraph 62</p> <p>Table 8 (at paragraph 66) showing tariff charge rates</p> <p>paragraph 68: Reference to "14% equity" and "This</p>	<p>This constitutes competitive and/or commercial information.</p> <p>It is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, it is information supplied in confidence, the disclosure of which could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition.</p>	Section 36(1) of PAIA

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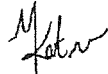
	accounts to 90% of the tariff  Paragraph 73  Paragraph 76 and Table 9  Paragraph 94		
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42

**SECTION E: SOLEMN DECLARATION BY REQUESTER/ MANDATED REPRESENTATIVE**

I, Mehmet Katmer, with Turkish Passport Number [REDACTED] hereby declare that:

- (a) I am authorised by Karpowership SA Saldanha Bay Proprietary Limited to make this declaration; and
- (b) All information provided herein is within my personal knowledge and is both true and correct.



.....  
**Signature**

I certify that the deponent:

- (a) has acknowledged that he knows and understands the contents of this application form and its annexures, that he has no objection to taking the prescribed oath and that he considers the oath binding on his conscience; and
- (b) has in the prescribed manner sworn that the contents of this application form and its annexures are true and signed same before me at ..... on this ..... day of ..... (year) .....

\_\_\_\_\_  
**COMMISSIONER OF OATHS**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Capacity \_\_\_\_\_





National Energy Regulator  
4th Floor, Kulawula House  
526 Vermeulen Street  
Arcadia  
Pretoria  
Attention: HoD Licensing and Compliance

7 April 2021

Dear Sirs

#### CONFIDENTIAL INFORMATION REQUEST

The Applicant hereby informs the National Energy Regulator of South Africa that the following information submitted as part of this generation licence application is confidential information in line with the Promotion of Administrative Justice Act, that should not be made available for public inspection:-

**1. Section D: Particulars of Long Term Arrangements with Primary Energy Supplier**

The particulars and the terms and conditions of the Gas Supply Term Sheet contains commercial information of a third party that is confidential.

**2. Section E: Maintenance Programme and Decommissioning Costs**

Section E1 and E2 contains commercial information of a third party that is confidential. The attachments.

**3. Section G: Financial Information**

3.1 The financial information contained in Section G is commercial information that is confidential.

3.2 Annexure - III – Financial Statements attached to the generation licence application contains revenues and costs and other financial information that is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.

**4. Section F: Customer Profile**

The terms of the Power Purchase Agreement and the standard form of the Power Purchase Agreement attached to the generation licence application is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.

**5. Section H: Human Resources**

The information contained in section H in respect of the job creation is commercial information of a third party and the attachments to Item 8 of Table of Contents - Supporting Documents bundle contains personal information and commercial information of a third party.

**6. Section J: Broad Based Black Economic Empowerment**

The information contained in Section J and the attachments under Items 10 – 15 of of Table of Contents -Supporting Documents is commercial, information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.

KarpowerShip SA, Saldanha Bay (RF) Proprietary Limited  
Address: 164 Totius Street, Groenkloof, Pretoria, Gauteng, 0027  
Postal address: PO Box 619, Pretoria, Gauteng, 0001  
[www.karpowership.com](http://www.karpowership.com)

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National Energy Regulator  
4th Floor, Kulawula House  
526 Vermeulen Street  
Arcadia  
Pretoria  
Attention: HoD Licensing, Compliance and Dispute Resolution

31 May 2021

Dear Mr Tshepo Ramokoka

**SUBMISSION OF ADDITIONAL INFORMATION AND CONFIDENTIAL INFORMATION REQUEST – APPLICATION FOR AN ELECTRICITY GENERATION LICENCE IN TERMS OF THE ELECTRICITY REGULATION ACT, 2006 (ACT NO. 4 OF 2006) – KARPOWERSHIP SA SALDANHA BAY (RF) PROPRIETARY LIMITED**

Further to the meeting held between NERSA and the Applicant on 24 May 2021, the Applicant has prepared an updated generation licence application that has been amended in accordance with NERSA's directions. The amendments are described in the cover letter to the updated application. This amended application form replaces the application form previously submitted, but should be read with the supporting documents / annexures submitted with the previous application, as these remain valid.

The Applicant hereby informs the NERSA that the following information submitted as part of this amended generation licence application is confidential information in line with the Promotion of Administrative Justice Act and Promotion of Access to Information Act ("PAIA") that should not be made available for public inspection:-

<u>Name of document</u>	<u>Where confidential info begins and ends</u>	<u>Facts and evidence supporting the request</u>	<u>Applicable sections of legislation</u>
The tender returnable schedules (Volume 6 – PPA and IA Tables) that formed part of the Applicant's bid submission to be awarded preferred bidder status and which have been submitted as part of Section F of the amended application form	Annexure A to the amended application form submitted herewith	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA

Further to the letter received from NERSA entitled "Acknowledgement of Receipt of a Generation Licence Application from Karpowership SA Saldanha Bay (Rf) (Pty) Ltd" dated 20 April 2021, please find enclosed with this letter the financial model, the financial model summary, the financial model manual and financial model audit opinion.

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The Applicant hereby informs the NERSA that the following information submitted as part of this generation licence application is confidential information in line with the Promotion of Administrative Justice Act and Promotion of Access to Information Act ("PAIA") that should not be made available for public inspection:-

<u>Name of document</u>	<u>Where confidential info begins and ends</u>	<u>Facts and evidence supporting the request</u>	<u>Applicable sections of legislation</u>
Financial Model	Entire Financial Model submitted under cover of this letter, including the excel spreadsheet, the detailed manual and the financial model summary	Section contains commercial information of a third party that is confidential.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA  Section 36(1) of PAIA
Financial Model Audit Opinion	The Financial Model Audit Opinion submitted under cover of this letter	Section contains commercial information of a third party that is confidential.  This is competitive information as it shows the profitability or otherwise of the company	Chapter 4 PAIA  Section 36(1) of PAIA

The Applicant previously submitted the below confidentiality request with the application for a generation licence submitted to NERSA in hard copy on 4 April 2021 and soft copy on 13 April 2021. The Application hereby reaffirms that the following information submitted as part of the generation licence application is confidential information in line with the Promotion of Administrative Justice Act and PAIA that should not be made available for public inspection:

<u>Name of document</u>  (Note: 'TOC' refers to Table of Contents to supporting documents)	<u>Where confidential info begins and ends</u>	<u>Facts and evidence supporting the request</u>	<u>Applicable sections of legislation</u>
Generation Licence Application Form – Saldanha Bay	Entirety of 'Section D: Particulars of Long Term Arrangements with Primary Energy Supplier'	Section contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 2 TOC):  'Section D – KPS RSA GSA Term	Entire document	Contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA

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Sheet - (Fuel Co - Saldanha) 13.12.2020'			
Generation Licence Application Form - Saldanha Bay	Entirety of 'Section E: Maintenance Programmes and Decommissioning Costs'	Section contains commercial information of a third party that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Saldanha Bay	Entirety of 'Section G: Financial Information'	Information contained is commercial information that is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 7 TOC):  'Section G Annex - III - Saldanha'	Entire document	Financial Statements attached to application contains revenues and costs and other financial information that is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information as it shows the profitability or otherwise of the company.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Saldanha Bay	Entirety of 'Section F: Customer Profile'	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 3 TOC):  'Section F - Connection Agreement PROFORMA 24.11.2020'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 4 TOC):  'Section F - RMIPP RFP - Power Purchase Agreement'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA

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Supporting documents (item 6 TOC):  'Section F - CEL – Saldanha'	Entire document	Information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Saldanha Bay	Entirety of 'Section H: Human Resources Information'	Information is commercial information of a third party and is confidential.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 8 TOC):  'Section H - Job Creation Table Operating Measurement Period'	Entire document	Information is commercial information of a third party and is confidential.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Saldanha Bay	Entirety of 'Section J: Broad Based Black Economic Empowerment'	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 10 TOC):  'Section J – BBBEE Appendices - SB'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 11 TOC):  'Section J - Saldanha Ownership - Bid Response'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA

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Supporting documents (item 12 TOC):  'Section J - Saldanha Skills Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 13 TOC):  'Section J - Saldanha Management Control Bid Response'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 14 TOC):  'Section J - Saldanha Supplier Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 15 TOC):  'Section J - Saldanha Enterprise Development Plan'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.  This is competitive information and should not be divulged.	Chapter 4 PAIA  Section 36(1) of PAIA
Generation Licence Application Form - Saldanha Bay	Entirety of 'Section K - Additional Information'	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA
Supporting documents (item 16 TOC):  'Section K - Letter of Appointment'	Entire document	Information is commercial information and is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.	Chapter 4 PAIA  Section 36(1) of PAIA

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Yours faithfully

KARPOWERSHIP SA SALDANHA BAY RF PROPRIETARY LIMITED

Karpowership SA Saldanha Bay (RF) Proprietary Limited  
Address: 164 Totius Street, Groenkloof, Pretoria, Gauteng, 0027  
Postal address: PO Box 619, Pretoria, Gauteng, 0001  
[www.karpowership.com](http://www.karpowership.com)

42



**Memo**

**To:** Mr Nhlanhla Gumede  
**Full-Time Regulator Member: Electricity Regulation**

**From:** Mr Zingisa Mavuso  
**Executive Manger: ELR**

**Cc:** Adv. Nomalanga Sithole  
**CEO**

**Date:** 18 October 2021

**Subject:** **REQUEST FOR CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION  
CONTAINED IN THE ENERGY REGULATOR'S DECISION AND REASONS  
FOR DECISION FOR KARPOWERSHIP COEGA (RF) (PTY) LTD'S  
APPLICATION FOR A GENERATION LICENCE.**

**1. PURPOSE**

To request the FTRM to approve that certain information contained in Karpowership SA Coega (RF) (Pty) Ltd.'s (Karpowership SA Coega) Decision and Reasons for Decision (RfD) documents be treated as confidential.

**2. BACKGROUND**

On 21 September 2021, the Energy Regulator at its meeting approved the generation licence application for seven Risk Mitigation Independent Power Procurer Preferred bidders. One of

**Regulator Members:**

\*Adv NP Sithole (Chief Executive Officer)

\*Mr N Gumede \*Ms N Maseti \*Mr MW Mkhize Mr S Mokoena Ms Z Mpungose Mr FK Sibanda

\*Full-Time Regulator Members

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

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Karpowership SA Coega with a request that Karpowership SA Coega should indicate the information it considers confidential before the RfD is posted on the National Energy Regulator of South Africa (NERSA) website.

In terms of section 32 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) ('the Constitution'), everyone has the right of access to records and/or information. However, there is a limitation to this right in relation to instance where the information is confidential.

The person who decides whether the information is confidential (in this case, the Energy Regulator) has to satisfy themselves that the information is protected in terms of the Promotion of Access to Information Act, 2000 (Act No.2 of 2000) (PAIA).

When the Energy Regulator decides on the request for confidential treatment of information, it should be guided by the relevant legislation. Section 36(1) of PAIA provides that:

*Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of a body if the record contains-*

- a) trade secrets of a third party;*
- b) financial, commercial, scientific or technical information, other than trade secrets of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interest of that third party; or*
- c) information supplied in confidence by a third party the disclosure of which could reasonably be expected-*
  - (i) to put that third party at a disadvantage in contractual or other negotiations; or*
  - (ii) to prejudice that third party in commercial competition.*

In addition, the Energy Regulator has considered the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA). The table of analysis of Karpowership SA Coega's request for confidential treatment of information is shown as **Annexure A** at the end of this memo.

### 3. ISSUES

On 12 October 2021, NERSA received an application from Karpowership SA Coega, requesting NERSA to treat the paragraphs and tables that contain the tariff charge rates, financial information, calculated tariff prices, Eskom budget quote fee and names of contractors, as confidential. Karpowership SA Coega's confidentiality application form is attached as **Appendix A**.

The approval of confidential treatment of commercially sensitive information of licensees falls within the delegated authority of the FTRM, this is in accordance with Section 9.a of the approved Delegation Matrix.



#### 4. ACTION TAKEN

This memo is accompanied by the non-confidential RfD.

#### 5. RECOMMENDATIONS

It is recommended that:

- a) the FTRM signs the memo;
- b) the FTRM approves that certain information on the RfD be considered confidential, RfD attached as **Appendix B**; and
- c) the signed memo be submitted to the Regulator Support Unit (RSU) Department.

#### APPENDICES

##### Appendix A: Karpowership SA Coega's confidentiality application form

Compiled by:

\_\_\_\_\_  
Mr Dennis Seemela  
HOD: ELC

\_\_\_\_\_  
Date:

Recommended/Not Recommended:

\_\_\_\_\_  
Mr Zingisa Mavuso  
Executive Manager: ELR

\_\_\_\_\_  
Date:

Approved/Not approved:

\_\_\_\_\_  
Mr Nhlanhla Gumede  
FTRM: Electricity

\_\_\_\_\_  
Date:

Request for confidential treatment of certain information contained in the Energy Regulator's Decision and Reasons for Decision for Karpowership SA Coega's application for a generation licence

4/2

## ANNEXURE A

### TABLE OF ANALYSIS OF KARPOWERSHIP SA COEGA (RF) (PTY) LTD'S REQUEST FOR CONFIDENTIAL TREATMENT INFORMATION

Karpowership SA Coega (RF) (Pty) Ltd (Karpowership SA Coega) has requested that the information tabled below be treated as confidential. table details the information and the Energy Regulator's proposed response to the request.

In this document:

'PAIA' means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

'ERA' means the Electricity Regulation Act, 2003 (Act No. 4 of 2003)

Table 1: Request for confidential treatment of information

Document name	Page, paragraph or line number	Licensee's reason for information to be kept confidential	Facts & evidence in support of request for confidential treatment of information	NERSA analysis and reference to relevant legislation
The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Coega's application for a generation licence.	Table 1 and table 8 under paragraph 66	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition.</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>Both these tables showing the tariff charge rates are considered confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>

Request for confidential treatment of certain information contained in the Energy Regulator's Decision and Reasons for Decision for Karpowership SA Coega's application for a generation licence

<p>The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Karpowership SA Coega's application for a generation licence</p>	<p>Table 6 and paragraph 51</p>	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <ul style="list-style-type: none"> <li>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</li> <li>(ii) prejudice that third party in commercial competition.</li> </ul>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>The table and the paragraph show the project funding structure and it is considered confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>
<p>The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Karpowership SA Coega's application for a generation licence</p>	<p>Table 7 and paragraphs 52, 53, 59, 60, 61 and 62</p>	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <ul style="list-style-type: none"> <li>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</li> </ul>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>The table and paragraphs are confidential as they deal with the project's financials.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>

<p>The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Karpowership SA Coega's application for a generation licence</p>	<p>Paragraph 68</p>	<p>(ii) prejudice that third party in commercial competition.</p> <p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>This paragraph highlights the capital cost recovery charge rate. This information is commercially sensitive and deemed confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>
<p>The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Karpowership SA Coega's application for a generation licence</p>	<p>Table 9, paragraph 74</p>	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>This table shows the applicant's tariff for the next 5 years, this information is confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>

<p>The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Karpowership SA Coega's application for a generation licence</p>	<p>Paragraph 96</p>	<p>(ii) prejudice that third party in commercial competition</p> <p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>This paragraph shows the Eskom budget quote, this is confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>
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**Memo**

**To:** Mr Nhlanhla Gumede  
**Full-Time Regulator Member: Electricity Regulation**

**From:** Mr Zingisa Mavuso  
**Executive Manger: ELR**

**Cc:** Adv. Nomalanga Sithole  
**Chief Executive Officer**

**Date:** 18 October 2021

**Subject:** **REQUEST FOR CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION  
CONTAINED IN THE ENERGY REGULATOR'S DECISION AND REASONS  
FOR DECISION FOR KARPOWERSHIP SA RICHARDS BAY (RF) (PTY)  
LTD'S APPLICATION FOR A GENERATION LICENCE.**

**1. PURPOSE**

To request the FTRM to approve that certain information contained in Karpowership SA Richards Bay (RF) (Pty) Ltd's (Karpowership SA Richards Bay) Decision and Reasons for Decision (RfD) documents be treated as confidential.

**2. BACKGROUND**

On 21 September 2021, the Energy Regulator at its meeting approved the generation licence application for seven Risk Mitigation Independent Power Procurer Preferred bidders. One of

**Regulator Members:**

\*Adv NP Sithole (Chief Executive Officer)

\*Mr N Gumede \*Ms N Maseti \*Mr MW Mkhize Mr S Mokoena Ms Z Mpungose Mr FK Sibanda

\*Full-Time Regulator Members

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

41

sent to Karpowership SA Richards Bay with a request that Karpowership SA Richards Bay should indicate the information it considers confidential before the RfD is posted on the National Energy Regulator of South Africa (NERSA) website.

In terms of section 32 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) ('the Constitution'), everyone has the right of access to records and/or information. However, there is a limitation to this right in relation to instance where the information is confidential.

The person who decides whether the information is confidential (in this case, the Energy Regulator) has to satisfy themselves that the information is protected in terms of the Promotion of Access to Information Act, 2000 (Act No.2 of 2000) (PAIA).

When the Energy Regulator decides on the request for confidential treatment of information, it should be guided by the relevant legislation. Section 36(1) of PAIA provides that:

*Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of a body if the record contains-*

- a) trade secrets of a third party;*
- b) financial, commercial, scientific or technical information, other than trade secrets of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interest of that third party; or*
- c) information supplied in confidence by a third party the disclosure of which could reasonably be expected-*
  - (i) to put that third party at a disadvantage in contractual or other negotiations; or*
  - (ii) to prejudice that third party in commercial competition.*

In addition, the Energy Regulator has considered the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA). The table of analysis of Karpowership SA Richards Bay's request for confidential treatment of information is shown as **Annexure A** at the end of this memo.

### 3. ISSUES

On 12 October 2021, NERSA received an application from Karpowership SA Richards Bay, requesting NERSA to treat the paragraphs and tables that contain the tariff charge rates, financial information, calculated tariff prices, Eskom budget quote fee and names of contractors, as confidential. Karpowership SA Richards Bay's confidentiality application form is attached as **Appendix A**.

The approval of confidential treatment of commercially sensitive information of licensees falls within the delegated authority of the FTRM, this is in accordance with Section 9.a of the approved Delegation Matrix.

#### 4. ACTION TAKEN

This memo is accompanied by the non-confidential RfD.

#### 5. RECOMMENDATIONS

It is recommended that:

- a) the FTRM signs the memo;
- b) the FTRM approves that certain information on the RfD be considered confidential, RfD attached as **Appendix B**; and
- c) the signed memo be submitted to the Regulator Support Unit (RSU) Department.

#### APPENDICES

##### Appendix A: Karpowership SA Richards Bay's confidentiality application form

Compiled by:

Dennis Seemela

Mr Dennis Seemela  
HOD: ELC

18-10-2021

Date:

Recommended/Not Recommended:

**ZMavuso**

**18 October 2021**

\_\_\_\_\_  
Mr Zingisa Mavuso  
Executive Manager: ELR

\_\_\_\_\_  
Date:

Approved/Not approved:

Nhlanhla Gumede

**18 October 2021**

\_\_\_\_\_  
Mr Nhlanhla Gumede  
FTRM: Electricity

\_\_\_\_\_  
Date:

Request for confidential treatment of certain information contained in the Energy Regulator's Decision and Reasons for Decision for Karpowership SA Richards Bay's application for a generation licence

4/11



## ANNEXURE A

### TABLE OF ANALYSIS OF KARPOWERSHIP SA RICHARDS BAY (RF) (PTY) LTD'S REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION

Karpowership SA Richards Bay (RF) (Pty) Ltd (Karpowership SA Richards Bay) has requested that the information tabled below be treated confidential. The table details the information and the Energy Regulator's proposed response to the request.

In this document:

'PAIA' means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

'ERA' means the Electricity Regulation Act, 2003 (Act No. 4 of 2003)

**Table 1: Request for confidential treatment of information**

Document name	Page, paragraph or line number	Licensee's reason for information to be kept confidential	Facts & evidence in support of request for confidential treatment of information	NERSA analysis and reference to relevant legislation
The Energy Regulator's Decision on Reasons for Decision on Karpowership SA Richards Bay's application for a generation licence.	Table 1 and table 8 under paragraph 64	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition.</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>Both these tables showing the tariff charge rates are considered confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>

Request for confidential treatment of certain information contained in the Energy Regulator's Decision and Reasons for Decision for Karpowership SA Richards Bay's application for a generation licence

The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Richards Bay's application for a generation licence	Table 6 and paragraph 49	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition.</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>The table and the paragraph show the project funding structure and it is considered confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>
The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Richards Bay's application for a generation licence	Table 7 and paragraphs 50, 51, 57, 58, 59 and 60	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>The table and paragraphs are confidential as they deal with the project's financials.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>

The Energy Regulator's Decision on Karpowership SA Richards Bay's application for a generation licence	Paragraph 66	<p>(ii) prejudice that third party in commercial competition.</p> <p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>This paragraph highlights the capital cost recovery charge rate. This information is commercially sensitive and deemed confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>
The Energy Regulator's Decision on Karpowership SA Richards Bay's application for a generation licence	Table 9, paragraph 72	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>This table shows the applicant's tariff for the next 5 years, this information is confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>

The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Richards Bay's application for a generation licence	Paragraph 82	<p>(ii) prejudice that third party in commercial competition</p> <p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>This paragraph contains the name of the subcontractors that will be employed by the applicant, this is confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>
The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Richards Bay's application for a generation licence	Paragraph 94	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>This paragraph shows the Eskom budget quote, this is confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>

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		(ii)	prejudice that third party in commercial competition		
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**Memo**

**To:** Mr Nhlanhla Gumede  
**Full-Time Regulator Member: Electricity Regulation**

**From:** Mr Zingisa Mavuso  
**Executive Manger: ELR**

**Cc:** Adv. Nomalanga Sithole  
**CEO**

**Date:** 18 October 2021

**Subject:** **REQUEST FOR CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION  
CONTAINED IN THE ENERGY REGULATOR'S DECISION AND REASONS  
FOR DECISION FOR KARPOWERSHIP SA SALDANHA BAY (RF) (PTY)  
LTD'S APPLICATION FOR A GENERATION LICENCE.**

**1. PURPOSE**

To request the FTRM to approve that certain information contained in Karpowership SA Saldanha Bay (RF) (Pty) Ltd's (Karpowership SA Saldanha Bay) Decision and Reasons for Decision (RfD) documents be treated as confidential.

**2. BACKGROUND**

On 21 September 2021, the Energy Regulator at its meeting approved the generation licence application for seven Risk Mitigation Independent Power Procurer Preferred bidders. One of

**Regulator Members:**

\*Adv NP Sithole (Chief Executive Officer)

\*Mr N Gumede \*Ms N Maseti \*Mr MW Mkhize Mr S Mokoena Ms Z Mpungose Mr FK Sibanda

\*Full-Time Regulator Members

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

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sent to Karpowership SA Saldanha Bay with a request that Karpowership SA Saldanha Bay should indicate the information it considers confidential before the RfD is posted on the National Energy Regulator of South Africa (NERSA) website.

In terms of section 32 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) ('the Constitution'), everyone has the right of access to records and/or information. However, there is a limitation to this right in relation to instance where the information is confidential.

The person who decides whether the information is confidential (in this case, the Energy Regulator) has to satisfy themselves that the information is protected in terms of the Promotion of Access to Information Act, 2000 (Act No.2 of 2000) (PAIA).

When the Energy Regulator decides on the request for confidential treatment of information, it should be guided by the relevant legislation. Section 36(1) of PAIA provides that:

*Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of a body if the record contains-*

- a) trade secrets of a third party;*
- b) financial, commercial, scientific or technical information, other than trade secrets of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interest of that third party; or*
- c) information supplied in confidence by a third party the disclosure of which could reasonably be expected-*
  - (i) to put that third party at a disadvantage in contractual or other negotiations; or*
  - (ii) to prejudice that third party in commercial competition.*

In addition, the Energy Regulator has considered the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA). The table of analysis of Karpowership SA Saldanha Bay's request for confidential treatment of information is shown as **Annexure A** at the end of this memo.

### 3. ISSUES

On 12 October 2021, NERSA received an application from Karpowership SA Saldanha Bay, requesting NERSA to treat the paragraphs and tables that contain the tariff charge rates, financial information, calculated tariff prices, Eskom budget quote fee and names of contractors, as confidential. Karpowership SA Saldanha Bay's confidentiality application form is attached as **Appendix A**.

The approval of confidential treatment of commercially sensitive information of licensees falls within the delegated authority of the FTRM, this is in accordance with Section 9.a of the approved Delegation Matrix.

#### 4. ACTION TAKEN

This memo is accompanied by the non-confidential RfD.

#### 5. RECOMMENDATIONS

It is recommended that:

- a) the FTRM signs the memo;
- b) the FTRM approves that certain information on the RfD be considered confidential, RfD attached as **Appendix B**; and
- c) the signed memo be submitted to the Regulator Support Unit (RSU) Department.

#### APPENDICES

**Appendix A: Karpowership SA Saldanha Bay's confidentiality application form**

Compiled by:

*Dennis Seemela*

Mr Dennis Seemela  
HOD: ELC

19-10-2021

Date:

Recommended/Not Recommended:

**ZMavuso**

**20 October 2021**

\_\_\_\_\_  
Mr Zingisa Mavuso  
Executive Manager: ELR

\_\_\_\_\_  
Date:

Approved/Not approved:

*Nhlanhla Gumede*

26 October 2021

\_\_\_\_\_  
Mr Nhlanhla Gumede  
FTRM: Electricity

\_\_\_\_\_  
Date:

Request for confidential treatment of certain information contained in the Energy Regulator's Decision and Reasons for Decision for Karpowership SA Saldanha Bay's application for a generation licence

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## ANNEXURE A

### TABLE OF ANALYSIS OF KARPOWERSHIP SA SALDANHA BAY (RF) (PTY) LTD'S REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION

Karpowership SA Saldanha Bay (RF) (Pty) Ltd (Karpowership SA Saldanha Bay) has requested that the information tabled below be treated confidential. The table details the information and the Energy Regulator's proposed response to the request.

In this document:

'PAIA' means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

'ERA' means the Electricity Regulation Act, 2003 (Act No. 4 of 2003)

Table 1: Request for confidential treatment of information

Document name	Page, paragraph or line number	Licensee's reason for information to be kept confidential	Facts & evidence in support of request for confidential treatment of information	NERSA analysis and reference to relevant legislation
The Energy Regulator's Decision	Table 1	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition.</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>Both these tables showing the tariff charge rates are considered confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>

Request for confidential treatment of certain information contained in the Energy Regulator's Decision and Reasons for Decision for Karpowership SA Saldanha Bay's application for a generation licence

<p>The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Saldanha Bay's application for a generation licence</p>	<p>Table 6 and paragraph 51</p>	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition.</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>The table and the paragraph show the project funding structure and it is considered confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>
<p>The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Saldanha Bay's application for a generation licence</p>	<p>Table 7 and paragraphs 52, 53, 59, 60, 61 and 62</p>	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>The table and paragraphs are confidential as they deal with the project's financials.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>

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		(ii) prejudice that third party in commercial competition.			
The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Saldanha Bay's application for a generation licence	Table 8, Paragraph 66, 68 and 73	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition</p>	<b>Confidential</b> The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].	<b>Confidential</b> This paragraph highlights the capital cost recovery charge rate equity interest rate of return and value of regasifying the LNG to natural gas. This information is commercially sensitive and deemed confidential.	
The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Saldanha Bay's application for a generation licence	Paragraph 76 and Table 9	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p>	<b>Confidential</b> The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].	<b>Confidential</b> This table shows the applicant's tariff for the next 5 years, this information is confidential.	

The Energy Regulator's Decision and Reasons for Decision on Karpowership SA Saldanha Bay's application for a generation licence	Paragraph 94	(ii) prejudice that third party in commercial competition	<p>The licensee has indicated that this information is confidential in accordance with the rules of the Risk Mitigation IPP Procurement Programme.</p> <p>The disclosure of this information would likely cause harm to commercial or financial interests.</p> <p>Moreover, the information is supplied in confidence, and the disclosure of it could also reasonably be expected to-</p> <p>(i) put a third party (the Applicant) at a disadvantage in contractual or other negotiations; or</p> <p>(ii) prejudice that third party in commercial competition</p>	<p><b>Confidential</b></p> <p>The disclosure of this information may reasonably be expected to prejudice the applicant in commercial competition [section 36 (1) (c) (i) and (ii) of PAIA].</p>	<p><b>Confidential</b></p> <p>This paragraph shows the Eskom budget quote, this is confidential.</p> <p>Section 36(1) (b) of PAIA prohibits disclosure of financial, commercial, scientific or technical information of third party.</p>
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