

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

X
5/6/2024

Case no: 23017/2022

In the matter between:

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

Applicant

and

THE NATIONAL ENERGY REGULATOR OF
SOUTH AFRICA

Private Bag X87, Pretoria 0001

First Respondent

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

2024-06-07

Second Respondent

GD-PRET-019

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 APPLICATION BETWEEN

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

Applicant

and

THE NATIONAL ENERGY REGULATOR OF
SOUTH AFRICA

First Respondent

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

Second Respondent

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

Third Respondent

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.

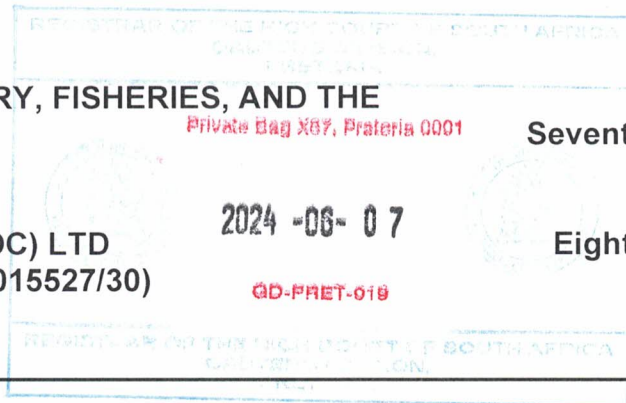
Sixth Respondent

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

Seventh Respondent

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

Eighth Respondent

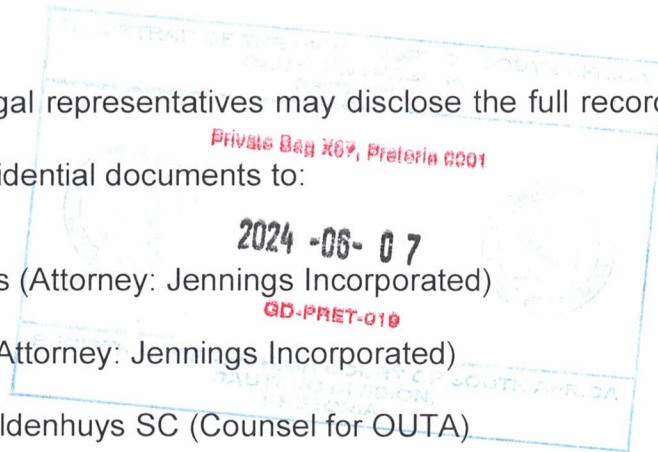


~~DRAFT ORDER~~

AFTER HAVING HEARD COUNSEL ON BEHALF OF THE PARTIES THE
FOLLOWING ORDER IS GRANTED:

1. The first respondent shall make available to the applicant's legal representatives, within 10 (ten) days of the granting of this order, a complete, unredacted record in the review proceedings instituted by the applicant on 26 APRIL 2022 under the above case number, which shall include but not be limited to:
 - 1.1. the documentation listed in annexure "A" hereto that was not contained in the first respondent's revised provisional index to the record; and

- 1.2. any documents that any of the respondents claim to be confidential.
2. The applicant's legal representatives shall sign the confidentiality undertaking attached as annexure "B" hereto which, subject to paragraph 3 below, prevents them from disclosing confidential information except for purposes of the litigation under the above case number unless ordered otherwise.
3. The applicant's legal representatives may disclose the full record including any allegedly confidential documents to:
- 3.1 Andri Jennings (Attorney: Jennings Incorporated)
 - 3.2 Delia Turner (Attorney: Jennings Incorporated)
 - 3.3 Adv Jannet Gildenhuys SC (Counsel for OUTA)
 - 3.4 Adv Sonika Mentz (Counsel for OUTA)
 - 3.5 Dr Grove Steyn (CEO: Meridian Economics)
 - 3.6 Adam Roff (Meridian Economics)
 - 3.7 Adv Stefanie Fick (OUTA representative)
 - 3.8 Ms Andrea Korff (OUTA representative)



subject to these persons also signing the confidentiality undertaking attached hereto as annexure "B".

4. Any pleading, affidavit or argument filed in the main application shall be made up in two parts, namely a confidential version and a non-confidential version, and

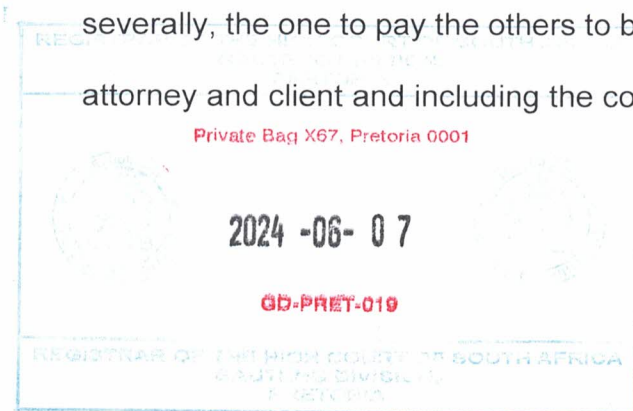
4.1. all references to confidential information are to be expunged from the non-confidential version;

4.2. access to the confidential version shall be reserved to applicant's legal representatives, the persons identified in ~~Error! Reference source not found.~~ ^{3.1} to ~~Error! Reference source not found.~~ ^{3.8 above}, and the Judge presiding in the main application.

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5. The applicant reserves the right to argue at the hearing of the review, or upon application by any party, that the entire Rule 53 Record, including the information regarded as confidential by the first respondent and/or the second to fifth respondents, be made available to the general public.

6. The first to fifth respondents are to pay the cost of this application, jointly and severally, the one to pay the others to be absolved, on the scale as between attorney and client and including the cost of two counsel on scale C.



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BY ORDER OF THE COURT

“A”

DOCUMENTATION MISSING FROM THE FIRST RESPONDENT'S REVISED
PROVISIONAL INDEX TO THE RULE 53 RECORD:

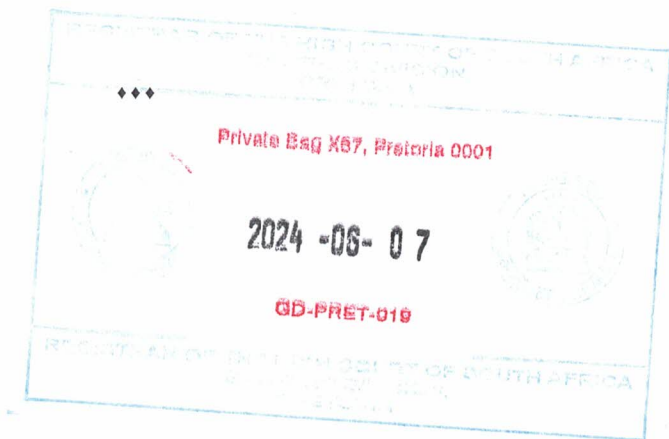
1. The draft Power Purchase Agreements (“PPAs”) to be entered into between the third to fifth respondents, on the one hand, and the sixth respondent on the other.
2. Any documents that speak to the mechanism for dealing with fluctuations in the international LNG (liquefied natural gas) price.
3. The records upon which the decision of the first respondent (to (i) approve that three electricity generation licences be granted in terms of the Electricity Regulation Act 4 of 2006 to the Karpowership companies to operate generation facilities at the Port of Saldanha Bay, the Port of Ngqura and the Port of Richards Bay, respectively (collectively, “**the generation licenses**”) and (ii) approve the charge rates used by each of the Karpowership companies to calculate the tariffs in their PPAs) would have been made, including, at the very least, the following:
 - 3.1. Minutes of the meeting(s) of the first respondent where the generation licence applications were discussed and approved.
 - 3.2. Any reports / reports recommending approval of the generation licence decisions.
 - 3.3. Reports by those experts consulted by the first respondent.

3.4. In relation to the request for proposal documents noted by the Electricity Sub-Committee on 9 March 2021 and then circulated to the Regulator's members:

3.4.1. The request for proposal documents;

3.4.2. The PPA analysis;

3.4.3. The minutes of the 9 March 2021 meeting.

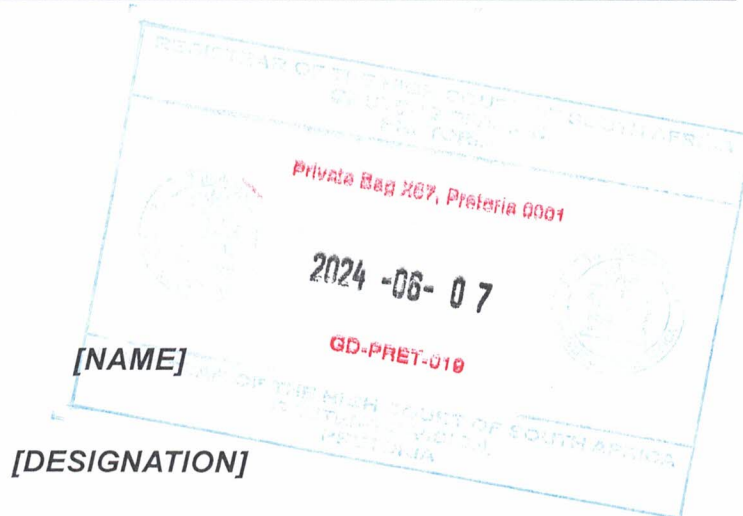


“B”

CONFIDENTIALITY UNDERTAKING:

IN RE: RECORD IN RULE 53 PROCEEDINGS IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA UNDER CASE NUMBER 23017/2022

I, the undersigned,



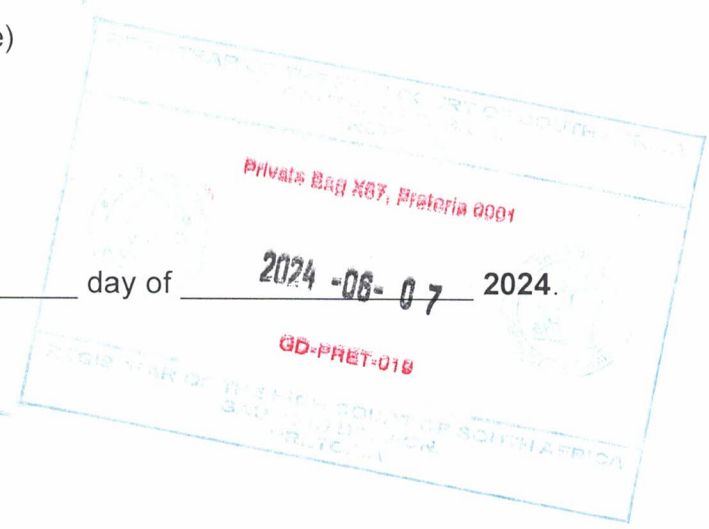
hereby undertake that:

1. I will not use those documents provided in the above proceedings as part of the Rule 53 Record that are confidential, for any purpose other than the litigation under the above case number unless ordered otherwise.
2. I will not divulge any confidential information or documents contained in the Rule 53 Record to any party other than the parties listed below, unless otherwise directed by a judge or a court or agreed between the parties.

FOR ORGANISATION UNDOING TAX ABUSE NPC ("OUTA"):

1. Andri Jennings (Attorney: Jennings Incorporated)
2. Delia Turner (Attorney: Jennings Incorporated)
3. Adv Jannet Gildenhuys SC (Counsel for OUTA)
4. Adv Sonika Mentz (Counsel for OUTA)
5. Dr Grove Steyn (CEO: Meridian Economics)
6. Adam Roff (Meridian Economics)
7. Adv Stefanie Fick (OUTA representative)
8. Ms Andrea Korff (OUTA representative)

Signed at _____ on this _____ day of 2024 -06- 07 2024.



[NAME]