



P O Box 24308

Lansdowne

7779

Our ref: GC-IEP-2-11-22

Mr. Cyril M. Ramaphosa

President of the Republic of South Africa

Private Bag X1000

Pretoria

0001

By Email c/o: presidentrsa@presidency.gov.za ; malebo@presidency.gov.za ;
khusela@presidency.gov.za ; geofrey@presidency.gov.za

Cc'd to: robert@presidency.gov.za ; nomusa@presidency.gov.za ; makhosini@presidency.gov.za ;
mike@presidency.gov.za ; angeline@presidency.gov.za ; mkile@presidency.gov.za ;
pieter.alberts@dmre.gov.za ; nonhlanhla.ndebele@dmre.gov.za

2nd November 2022

Dear President Cyril Matamela Ramaphosa,

Re: Proclamation of Section 6 of the National Energy Act, 2008

1. As you know, section 6 of the National Energy Act, 2008 (**NEA**) remains on the statute books, but is not yet in operation. Section 21 invests you with the power to bring it into force when the circumstances are appropriate.
2. Green Connection is deeply concerned that the inoperative status of section 6 is retarding our nation's ability to respond to its energy crisis and to undertake long-term energy planning in a coordinated, democratic and environmentally sustainable manner. Section 6 of the NEA is meant to help us do just that. It requires the Minister responsible for energy to develop and maintain an Integrated Energy Plan (**IEP**), based on current science, long-term policy perspectives, global and domestic climate change strategies and public input.
3. Our Attorney, Adrian Pole, has tried to engage with your office and the Department of Mineral Resources & Energy (**Department**) by correspondence for almost two years. The exchanges stretch back to November 2020. The letters canvas substantive issues in detail (there were at least six requests on behalf of Green Connection). The goal was to help move the legislative process along, to breathe life into section 6.

4. Sadly, nothing of substance has come of those engagements. Green Connection has been blocked at every turn from doing what it—and Parliament—knows to be right and lawful. When our requests for assistance from the Department got us nowhere, we invoked the statutory right to access information under PAIA. But our formal request was ignored. So was our appeal against the deemed refusal to give us information.
5. Green Connection’s work in the energy space is beneficial, credible and—we believe—valuable. We have demonstrated the value of our efforts through fruitful engagements with officials and public representatives in the sector. And when cooperative endeavours have not succeeded, we have demonstrated the merit of our ideas in the courts.
6. We have already set out in earlier correspondence compelling legal and policy reasons for you to bring section 6 into operation. That you are unwilling to do so brings us to the point where Green Connection has to resort to the courts to bring the law into effect.
7. Green Connection has therefore instructed lawyers to draw a court application to review your failure or refusal to bring section 6 into force. This decision was based on the advice of independent senior and junior advocates who specialise in public law. We claim privilege over the advice, but want to convey the essence of the case against you.
 - a. Section 21 of the NEA requires you personally to determine that the circumstances are appropriate for bringing section 6 into operation. It requires constant vigilance on your part. But you have abdicated that responsibility to the Minister of Minerals and Energy.
 - b. Based on what we could learn from the Department, the Minister’s reasons for not advising you to bring section 6 into effect are based on an untenable interpretation of section 6. Bringing it into operation would not, without more, expose the Minister to breach of a statutory obligation.
 - c. As it happens, the former Minister already started the process of developing the IEP. That is what section 6 would require. Cabinet—including your predecessor—approved the draft IEP, which was put out for public comment. Section 6 would also have required that. So why hold back on making the statutory duty effective?
 - d. The fact that the IEP has not been completed is no reason not to bring section 6 into operation. Section 6 would require a development process and ongoing refinement; it would not require a finished product the moment it is brought into operation. An IEP by its very nature is meant to evolve and not be static.
 - e. So any advice by the Minister that section 6 is not ripe for implementation would be unsupportable and not rationally related to the actual state of play, both past and present. It also does not fit with what the Minister intends to do—i.e. to continue to refine the draft IEP in anticipation of its publication.
 - f. The Minister is also mistaken in thinking that other sector plans need to be established before bringing section 6 into operation. The IEP under section 6 is meant to inform those sector plans, after all. The Minister is creating a catch-22 situation, irrationally.

- g. As far as you have relied on the Minister's unsupportable views, your own failure or refusal to bring section 6 into effect is legally tainted. And your inaction frustrates the objects of the NEA.
8. Disparate decisions about South Africa's energy future is something section 6 would curb, if brought into effect. Yet there are a host of energy projects being considered and undertaken without a comprehensive and long-term plan. The IEP would be that plan. It is meant to balance competing economic, environmental, political and social interest and set the context in which energy-related decisions should be made. It is unnecessary to list these projects to appreciate the point.
9. There is a burning need for an IEP. But the work done so far is meaningless without section 6 having legal effect.
10. These grounds are not meant to be exhaustive. What we want to convey is the nub of the problem as it will play out in a court and in the public arena. This could be averted by doing what section 21, the NEA's objects and Parliament demand—by bringing section 6 into force.
11. Green Connection intends to launch its court application imminently. We remain, however, open to meaningful engagement on this issue. Green Connection believes in dialogue and finding constructive solutions for the greater good. We therefore encourage you to reconsider your position and to approach this matter in the spirit of cooperation, and we will gladly avail ourselves to discuss and decide on steps to resolve this dispute.

Sincere regards,



L. McDaid

Strategic Lead, the Green Connection