

'ANNEXURE B'



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5 February 2022

**Re: THE GREEN CONNECTION
COMMENTS ON AND OBJECTIONS TO:**

- (1) KARPOWERSHIP SA SALDANHA BAY (RF) PROPRIETARY LIMITED - APPLICATION FOR OPERATION OF A DISTRIBUTION FACILITY (ref. Gala.d.F3/1747/2021)**
- (2) KARPOWERSHIP SA COEGA (RF) PROPRIETARY LIMITED - APPLICATION FOR OPERATION OF A DISTRIBUTION FACILITY (ref. Gala.d.F3/1744/2021)**
- (3) KARPOWERSHIP SA RICHARDS BAY (RF) PROPRIETARY LIMITED - APPLICATION FOR OPERATION OF A DISTRIBUTION FACILITY (ref. Gala.d.F3/1742/2021)**
- (4) KARPOWERSHIP SA SALDANHA BAY (RF) PROPRIETARY LIMITED - APPLICATION FOR CONSTRUCTION OF A DISTRIBUTION FACILITY (ref: Not Known)**
- (5) KARPOWERSHIP SA COEGA (RF) PROPRIETARY LIMITED - APPLICATION FOR CONSTRUCTION OF A DISTRIBUTION FACILITY (ref. Gala.d.F1/1744/2021)**
- (6) KARPOWERSHIP SA RICHARDS BAY (RF) PROPRIETARY LIMITED - APPLICATION FOR CONSTRUCTION OF A DISTRIBUTION FACILITY (ref: Not Known)**
- (7) KARPOWERSHIP SA FUEL SERVICES COMPANY (PTY) LTD - APPLICATION FOR A GAS TRADING LICENCE (ref. Gala.Tr.F1/1748/2021)**
- (8) KARPOWERSHIP SA FUEL SERVICES COMPANY (PTY) LTD - APPLICATION FOR A LNG STORAGE LICENCE (ref. Gala.s.F3/1739/2021)**
- (9) KARPOWERSHIP SA FUEL SERVICES COMPANY (PTY) LTD – APPLICATION FOR A LICENSE TO OPERATE A RE-GASIFICATION FACILITY (ref. Gala.rF3/1735/2021)**

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1.

A. INTRODUCTION

These comments are made on behalf the Green Connection in accordance with section 10(d) of the National Energy Regulator Act¹ in respect of the following applications:

- (1) Karpowership SA Saldanha Bay (Rf) Proprietary Limited - Application for Operation of a Distribution Facility
- (2) Karpowership SA Coega (Rf) Proprietary Limited - Application for Operation of a Distribution Facility
- (3) Karpowership SA Richards Bay (Rf) Proprietary Limited - Application for Operation of a Distribution Facility
- (4) Karpowership SA Saldanha Bay (Rf) Proprietary Limited - Application for Construction of a Distribution Facility
- (5) Karpowership SA Coega (Rf) Proprietary Limited - Application for Construction of a Distribution Facility
- (6) Karpowership SA Richards Bay (Rf) Proprietary Limited - Application for Construction of a Distribution Facility
- (7) Karpowership SA Fuel Services Company (Pty) Ltd - Application for a Gas Trading Licence
- (8) Karpowership SA Fuel Services Company (Pty) Ltd - Application for a LNG Storage Licence
- (9) Karpowership SA Fuel Services Company (Pty) Ltd – Application for a license to operate a re-gasification facility

2.

The abovementioned companies are referred to collectively herein as the ‘Karpowership companies’, and the various licence applications set out above are referred to collectively as the ‘gas license applications’. The Karpowership projects proposed for the ports of Saldanha Bay, Ngqura and Richards Bay are referred to collectively as the ‘Karpowership projects’.

3.

The Green Connection is a registered non-governmental organisation, that believes economic growth and development, improvement of socio-economic status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. It aims to provide practical support to both the government and non-governmental/civil society sectors, which

¹ Act 40 of 2004.

are an integral part of sustainable development. The Green Connection is an environmental and social justice civil society organisation that promotes sustainable livelihoods and the achievement of environmental rights.

4.

Should it be required, the Green Connection will substantiate these comments by way of a solemn declaration.

5.

B. LEGISLATIVE CONTEXT

Some of the relevant portions of the statutory and regulatory framework governing gas license applications, and which will inform NERSA's decision on the various Karpowership companies' gas license applications, are set out below.

6.

a) National Energy Regulator Act² (NERA)

NERA was enacted to establish a single regulator to regulate,³ among other things, the electricity and piped-gas petroleum sector, and the object of NERA is to establish the National Energy Regulator (NERSA) for this purpose.⁴

7.

NERSA is required to undertake the functions of the Gas Regulator as set out in s4 of the Gas Act and the functions set out in s4 of NERA.⁵

8.

The duties of the members of the NERSA are set out in section 9(1), in terms of which the members must:

- (a) act in a justifiable and transparent manner whenever the exercise of their discretion is required;
- (b) at all times act in the interests of the Energy Regulator and not in their own or sectoral interests;
- (c) act independently of any undue influence or instruction;

² 40 of 2004.

³ Preamble.

⁴ Section 1.

⁵ S4(1)(a) and (c).

- (d) recuse themselves from and refrain from voting on or discussing any matter, pending before the Energy Regulator in which they have a direct or indirect pecuniary interest;
- (e) act in a manner that is required and expected from the holder of a public office; and
- (f) act in the public interest.

9.

Section 10 stipulates that every decision of NERSA must be in writing and must be:

- (a) consistent with the Constitution and all applicable laws;
- (b) in the public interest;
- (c) within the powers of the Energy Regulator, as set out in this Act, the Electricity Act, the Gas Act and the Petroleum Pipelines Act;
- (d) taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator;
- (e) based on reasons, facts and evidence that must be summarised and recorded; and
- (f) explained clearly as to its factual and legal basis and the reasons therefor.⁶

10.

Any decision of NERSA and the reasons therefor must be available to the public, except information that is protected in terms of the Promotion of Access to Information Act⁷ (PAIA).⁸ Any person may institute proceedings in the High Court for the judicial review of an administrative action by NERSA in accordance with the Promotion of Administrative Justice Act⁹ (PAJA).¹⁰

11.

b) Gas Act¹¹

The Gas Act was enacted to (among other things) to: promote the orderly development of the piped gas industry; to establish a national regulatory framework; and to establish a National Gas Regulator as the custodian and enforcer of the national regulatory framework.

12.

The objects of the Gas Act are to:

- (a) promote the efficient, effective, sustainable and orderly development and operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities and the provision of efficient, effective and sustainable gas transmission, storage, distribution, liquefaction, re-gasification and trading services;
- (b) facilitate investment in the gas industry;

⁶ Section 10(1).

⁷ 2 of 2000.

⁸ Section 10(2).

⁹ 3 of 2000.

¹⁰ Section 10(3).

¹¹ Act 48 of 2001.

- (c) ensure the safe, efficient, economic and environmentally responsible transmission, distribution, storage, liquefaction and re-gasification of gas;
- (d) promote companies in the gas industry that are owned or controlled by historically disadvantaged South Africans by means of licence conditions so as to enable them to become competitive;
- (e) ensure that gas transmission, storage, distribution, trading, liquefaction and re-gasification services are provided on an equitable basis and that the interests and needs of all parties concerned are taken into consideration;
- (f) promote skills among employees in the gas industry;
- (g) promote employment equity in the gas industry;
- (h) promote the development of competitive markets for gas and gas services;
- (i) facilitate gas trade between the Republic and other countries; and
- (j) promote access to gas in an affordable and safe manner.¹²

13.

Section 17 of the Gas Act stipulates (among other things) that licence applicants must publish a notice of the application in at least two newspapers circulating in the area of the proposed activity in any two official languages, one of which must be in English. The advertisement must be published for such period or in such number of issues of a newspaper as may be prescribed.

14.

Section 23 of the Gas Act provides (among other things) that any licence is valid for a period of 25 years (or such longer period as the Gas Regulator may determine), and that an application for renewal must be granted (although the Gas Regulator may set new or different licence conditions). A licensee may not assign its licence to another party.

15.

In terms of the Gas Act Rules,¹³ the applicant is required to publish the prescribed notice in at least two newspapers circulating in the area of the proposed activity; and in any two official languages commonly spoken in the area of the proposed activity, one of which must be English.¹⁴ NERSA is empowered, if it deems it necessary considering the specific characteristics of an application, to direct an applicant to publish the notice in more than one issue of a newspaper circulating with the area of the proposed activity, but not exceeding three issues or on more than one day but not exceeding three days.¹⁵

¹² Section 2.

¹³ GN470 of 28 May 2021.

¹⁴ Rule 8(3).

¹⁵ Rule 8(5).

16.

In terms of Rule 10(1), an objection to an application for a new licence must be in the form specified in Annexure D and must contain all information specified therein. In terms of Rule 10(6), comments on an application for a license, which are not intended to constitute an objection, may be submitted in writing on or before the close of the objection period.

17.

Regarding Energy Regulator Decisions affecting any person, Rule 15 provides as follows:

- (1) For any administrative action which might materially and adversely affect the rights or legitimate expectations of any person, the Energy Regulator must call for written submission of relevant views, facts and evidence.
- (2) The call for written representations—
 - (a) must be published on the Energy Regulator’s web site;
 - (b) may also be published on a public notice board outside the Energy Regulator’s offices; and
 - (c) must comply with all the procedure outlined in section 3 of the Promotion of Administrative Justice Act.
- (3) If considered appropriate by the Energy Regulator and where persons concerned can be readily identified, notices of the call for written representations may be communicated by the Energy Regulator directly to such persons.
- (4) For all other decisions of the Energy Regulator which do not constitute an administrative action as defined in the Promotion of Administrative Justice Act but which may affect or are of interest to other persons, the Energy Regulator must allow such interested and affected persons an opportunity to submit their views and present relevant facts and evidence.
- (5) For purposes of sub-rule (4) above, the Energy Regulator must give at least 14 days’ notice of the deadline for submission of written representations.
- (6) Written representations submitted in terms of this... must be submitted together with an affidavit signed by the submitter or a mandated representative confirming that the information submitted is true and correct.
- (7) At the close of each consultation process, all representations received will be considered in taking a decision and compiling reasons therefor.
- (8) A non-confidential version of any such decision and reasons will be published on the Energy Regulator’s website.

18.

Regarding Energy Regulator Decisions affecting the public, Rule 16 provides as follows:

- (1) For any administrative action which might materially and adversely affect the rights of the public, the Energy Regulator will follow the procedure outlined in section 4 of the Promotion

of Administrative Justice Act and Regulations made in terms thereof, including a consultation period of at least 30 days with interested and affected persons.

- (2) Where the Energy Regulator chooses to hold a public hearing as contemplated in Regulation 11 of the Regulations made in terms of the Promotion of Administrative Justice Act, the Energy Regulator must give notice of the public hearing at least 14 days before the date of the hearing.
- (3) For all other decisions of the Energy Regulator which do not constitute an administrative action as defined in the Promotion of Administrative Justice Act but which may affect or are of interest to other persons, the Energy Regulator must allow such interested and affected persons a consultation period of at least 14 days.
- (4) Written representations submitted in terms of this Rule 16 must be submitted together with an affidavit signed by the submitter or a mandated representative confirming that the information submitted is true and correct.
- (5) At the close of each consultation process, all representations received will be considered in taking a decision and compiling reasons therefor.
- (6) A non-confidential version of any such decision and reasons will be published on the Energy Regulator's website.

19.

C. OUTSTANDING AUTHORISATIONS AND DOCUMENTS

As far as the Green Connection is aware, at the time of submitting these comments the following authorisations and documents remain outstanding in relation to the Karpowership projects:

- Environmental authorisations;
- The rights from the Transnet National Ports Authority (TNPA) for port access, construction, operation and maintenance;
- The Fuel Supply Agreement (and in particular any agreements with international fuel suppliers); and
- The Power Purchase Agreement.

20.

a) Environmental Authorisations

On 23 June 2021, the Department of Forestry, Fisheries and the Environment (DFFE) notified the applicant that it had decided to refuse the Karpowership projects' applications for environmental authorisation, and issued Records of Refusal in respect of each application.

21.

At the time of finalising these comments, the Records of Refusal were still under appeal.

22.

The Green Connection submits that in the absence of an environmental authorisation for the various Karpowership projects, the applicant is unable to demonstrate that it has the ability to comply with all applicable environmental legislation.¹⁶ The appeal decision is in the hands of the DFFE appeal authority.

23.

The Green Connection respectfully submits that it would be irregular for NERSA to grant the various gas licenses to an applicant in the absence of a lawful environmental authorisation.

24.

b) TNPA rights

To the Green Connection's knowledge, the Karpowership companies have not been granted rights from the Transnet National Ports Authority (TNPA) for port access, construction, operation and maintenance.

25.

The Green Connection respectfully submits that it would be irregular for NERSA to grant the various gas licenses to an applicant in the absence of such rights being granted.

26.

c) Fuel Supply Agreement

It is understood that the fuel supplier is subsidiary Karpowership company, a newly formed company with no trading history in fuel supply. Shell has confirmed that it is the exclusive supplier of LNG to the three Karpowership projects.¹⁷ Given that the contractual arrangement information has either not been provided in the applications or has been redacted, the Green Connection and other interested and affected parties (I&APs) and/or the public are precluded from commenting on the terms of this fuel supply arrangement.

27.

It is also not known what the implications are of a subsidiary company having been formed for the

¹⁶ As required by section 16(2)(f) of the Gas Act.

¹⁷ <https://www.engineeringnews.co.za/article/shell-expresses-concern-over-rmipp-p-delays-as-it-confirms-karpowership-sa-partnership-2021-07-13>

purpose of supplying LNG to the Karpowership projects, whether this will increase the cost of fuel supply (and if so to what extent), and whether any such increased cost will be passed on to the South African electricity user / public. According to a media report citing anonymous sources, Eskom does not want to buy electricity from Karpowerships because it is concerned about (among other things) the cost of the contract. According to the report Eskom has indicated that it will look at options 'including the possibility of recovering the cost of Karpowerships' charges over the course of the contract through tariffs before signing'.¹⁸ In the absence of adequate information being provided regarding the implications of a Karpowership subsidiary sourcing gas from an exclusive international energy supplier, the Green Connection and other I&APs are precluded from making further meaningful comment on this issue.

28.

The DMRE IPP office has been reported as stating that the price of gas for the Karpowership projects is indexed to the US dollar commodity price of the LNG fuel, the US dollar/rand exchange rate, the carbon price or carbon tax rate, and other indices.¹⁹ It has been reported in the media that:

"Any exposure to commodity and exchange rate fluctuations does result in risk and opportunity. Eskom will employ mechanisms such as hedging, if available, to mitigate against the risk," Eskom said.

It added: "Eskom ... acknowledges that there is risk in these programs that ultimately are borne by consumers... We are concerned that consumers are having to bear all these risks through price increases."²⁰

29.

Given that the contractual arrangement information has either not been included in the applications documents or has been redacted, the Green Connection and other I&APs and/or the public are precluded from assessing the potential negative implications of this arrangement (including the risk of additional costs being passed through to South African electricity consumers should there be any significant increases in US dollar commodity price of LNG, or should the devalue significantly against the US dollar).

30.

¹⁸ <https://www.news24.com/fin24/Companies/Industrial/eskom-doesnt-want-to-buy-electricity-from-turkish-powerships-insiders-say-20210506>

¹⁹ <https://www.egsa.org.za/policy-planning/energy-efficiency-demand-side-management/on-the-selection-of-powerships-over-renewables-and-battery-storage-for-two-thirds-of-the-rmipppp/>

²⁰ <https://amabhungane.org/stories/210514-powerships-how-the-tender-kneecapped-renewables-and-favoured-gas/>

d) Power Purchase Agreement

It is not known whether a power purchase agreement (PPA) has been finalised or entered into between the Karpowership companies and Eskom.

31.

As a consequence, it is not known whether or how any such PPA addresses the issue of stranded assets (i.e. should the contracted energy purchases over time become more expensive than comparable sources of supply).²¹

32.

It is also not known whether any such PPA includes 'take-or pay' provisions or a minimum offtake provision, and if so what the extent of such provisions are or what implications this has, for Eskom and in turn for electricity users and taxpayers. It has been reported in the media that:

Another feature of the RMI4P amplifies this risk [of consumers bearing the risk of price increases] enormously. The power purchase agreement will guarantee a minimum offtake by Eskom of 70% of all the power the bidder could provide – whether or not Eskom needs it or not. For a programme meant to provide power on demand to prevent load shedding, this is, arguably, illogically generous.²²

33.

It is also not known whether any such PPA includes termination payments (in the event that in the future Eskom may need to terminate a PPA and 'buy out' the PPA), and if so what the cost implications, conditions and consequences of same would be. In terms of the Electricity Regulations on New Generation Capacity, NERSA is required (when determining licence conditions relating to prices, charges and tariffs) to ensure that the buyer (Eskom) is able to recover the full amount of the costs incurred by it in relation to (among other things) the costs of and amounts paid by it arising from the termination of a PPA.²³ Accordingly, the Green Connection maintains that it and other I&APs should be afforded the opportunity to comment on the termination provisions and cost implications given that these costs would be passed through to South African electricity users.

²¹ The term 'Stranded contracts' is defined in the Regulatory Rules for Power Purchase Cost Recovery (GNR.119 of 24 February 2010) as meaning 'contracted energy purchases that over time become more expensive than comparable sources of supply (at that future point in time)'. Clause 11.7 of the Rules indicate that these may be due to change in market structure, change in electricity demand, or change in the relative cost of power supply.

²² <https://amabhungane.org/stories/210514-powerships-how-the-tender-kneecapped-renewables-and-favoured-gas/>

²³ Regulation 10(e).

34.

It is also not known whether any such PPA makes provision for, or includes requirements relating to, hedging against variable energy (gas) costs (i.e. the requirement to take out insurance or otherwise indemnify Eskom – and the South African electricity user and public in turn – against commodity and foreign exchange risks linked to the price of fuel and the repayment of debt). In terms of the Electricity Regulations on New Generation Capacity, the Regulator is required (when determining licence conditions relating to prices, charges and tariffs) to ensure that the buyer is able to recover all other costs efficiently incurred by the buyer in participating in an IPP procurement programme and in purchasing new generation capacity through new generation capacity projects, including (among other things) hedging costs.²⁴ Accordingly, the Green Connection maintains that it and other I&APs should be afforded the opportunity to comment on the hedging cost provisions and cost implications given that these costs will be passed through to South African electricity users.

35.

It is also not known what arrangement are included in any PPA regarding Carbon Tax obligations, and whether Karpowership will be entitled to recover any Carbon Tax that it is required to pay from Eskom. Should the PPA include such a clause, Karpowership will effectively be given a 'free ride' from a Carbon Tax perspective. In such circumstances, it is also likely that these Carbon Tax costs will be passed through by Eskom to the South African electricity user.

36.

D. INADEQUATE PUBLIC NOTICE

The Green Connection became aware of the Karpowership companies' gas license applications when it was alerted to notices relating to the Coega applications placed in the Daily Dispatch. These notices were behind a 'pay wall', preventing access by persons who do not (or cannot afford to) subscribe to the Daily Dispatch.

37.

The Green Connection has not seen any other notices that may have been published in other newspapers.

38.

²⁴ Regulations 10(f).

It is noted that copies of the various applications have also been posted on the NERSA and Karpowership SA websites. While the application in respect of LNG storage licenses could not be downloaded from the NERSA website, it was accessible on the Karpowership website.

39.

As far as the Green Connection can determine, these websites do not post any notifications inviting public comments, representations or objections, nor do they indicate the time period for submitting such comment.

40.

The manner of notification is of concern to the Green Connection, as it seems highly unlikely that disadvantaged I&APs and/or members of the public will be aware of the applications (given that the Daily Dispatch notices are behind a 'pay wall', and given that the NERSA and Karpowership SA websites do not seem to have posted any of required notices).

41.

The Green Connection respectfully submits that the notices given are inadequate, and furthermore do not meet the requirements of section 2(4)(f) of the National Environmental Management Act²⁵ (NEMA), which requires that the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.

42.

E. REDACTION OF INFORMATION RENDERS THE DECISION-MAKING PROCESS PROCEDURALLY UNFAIR

The Green Connection submits that the redaction of the critical information in the various Karpowership companies' gas license applications constrains its ability to make meaningful, informed comments or representations on various issues relating to the various gas license applications. Should NERSA issue the various gas licenses in these circumstances, the Green Connection is of the view that, notwithstanding section 16(3)²⁶ of the Gas Act (in respect of which the public was not afforded any

²⁵ 107 of 1998.

²⁶ Section 16(3) provides that the applicant may request confidential treatment of commercially sensitive information contained in an application and, subject to concurrence by the Gas Regulator, such information may be withheld from publicly available copies of the application.

opportunity to make representations), its decision will arguably amount to procedurally unfair administrative action, and will be vulnerable to being set aside on review.

43.

F. 20 YEAR (LONG TERM) POWER PURCHASE CONTRACT PERIOD

The Green Connection submits that NERSA should refuse to grant the Karpowership companies' gas licenses for the reasons set out in paragraph C above, including (but not limited to) if the PPAs are found to lock-in Eskom without including appropriate mechanisms to allow Eskom to terminate or exit these agreements should the contracted prices prove not to be cost-effective or reasonable over the course of the 20-year contract period. It is submitted further that a failure by NERSA to do so will result in it being in breach of its statutory duty to act in the public interest, and will also be contrary to the objectives of the Gas Act, in particular the objectives of:

- promoting the efficient, effective, sustainable and orderly development and operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities and the provision of efficient, effective and sustainable gas transmission, storage, distribution, liquefaction, re-gasification and trading services;
- ensuring the safe, efficient, economic and environmentally responsible transmission, distribution, storage, liquefaction and re-gasification of gas; and
- ensuring that gas transmission, storage, distribution, trading, liquefaction and re-gasification services are provided on an equitable basis and that the interests and needs of all parties concerned are taken into consideration;

44.

G. CLIMATE CHANGE LOCK-IN

According to the environmental impact report (EIR) submitted by Karpowership in the National Environmental Management Act²⁷ (NEMA) environmental authorisation process, the Karpowership Saldanha project is estimated to have cumulative generation emissions of 15.21 million tons of CO₂e (calculated over the 20 year contract period at constant 100% capacity), while the Karpowership Ngqura and Richards Bay projects are estimated to have cumulative generation emissions of 19.56 million tons of CO₂e each (calculated over the 20 year contract periods at constant 100% capacity).

²⁷ 107 of 1998.

Cumulatively, the Karpowership project will therefore generate emissions of at least 54.33 million tons of CO₂e.

45.

These emissions are also likely to be an underestimation, as recent studies have revealed that methane emissions from the U.S. oil and gas supply chain found leakage rates 60 percent higher than reported by the Environmental Protection Agency (EPA) and concluded that natural gas is just as damaging as coal for the climate over a 20-year time frame. Recent studies also disprove the claim that natural gas is a transitional “bridge” fuel that can lower greenhouse gas emissions while renewable energy solutions are developed, and that expanded use of natural gas impedes rather than encourages investments in, and deployment of, renewable energy infrastructure.²⁸

46.

The UN Framework Convention on Climate Change enjoins State Parties to take precautionary measures to anticipate, prevent or minimize the causes of climate change.²⁹ As a party to the UNFCCC that ratified the Kyoto Protocol and adopted the Paris Agreement, South Africa has committed to ‘working with others to ensure temperature increases are kept well below 2°C above pre-industrial levels, which could include a further revision of the temperature goal to below 1.5°C in light of emerging science’³⁰ by reducing GHG emissions. There have been various Conferences of the Parties and meetings since, with decisions related to Nationally Determined Contributions (NDCs) contained in decisions 4/CMA.1 and 18/CMA.1 and their annexes.³¹ South Africa revised its NDCs in 2021.³²

Table 2 - South Africa's updated NDC mitigation targets

Year	Target	Corresponding period of implementation
2025	South Africa’s annual GHG emissions will be in a range from 398-510 Mt CO ₂ -eq.	2021-2025
2030	South Africa’s annual GHG emissions will be in a range from 350-420 Mt CO ₂ -eq.	2026-2030

²⁸ These studies are discussed and referenced in study done on behalf of the Green Connection, *Grasping for Gas* (Jan Arkert), at p12, available online at: <https://thegreenconnection.org.za/doaction/wp-content/uploads/2021/04/Grasping-For-Gas-Report-22042021.pdf>

²⁹ Article 3.3. Available online at: <http://unfccc.int/resource/docs/convkp/conveng.pdf>

³⁰ See for example South Africa’s *Intended Nationally Determined Contribution (INDC)*, available online at: <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/South%20Africa%20First/South%20Africa.pdf>

³¹ Available online at: https://unfccc.int/sites/default/files/resource/cma2018_03a01E.pdf and https://unfccc.int/sites/default/files/resource/CMA2018_03a02E.pdf

³² <https://www.dffe.gov.za/sites/default/files/docs/southafricasINDCupdated2021sept.pdf>, at p15.

47.

These NDCs are based on (among other things) South Africa's national GHG emissions inventory. South Africa's energy sector is estimated at contributing about 84% percent to the country's overall GHG emissions,³³ and increased fossil fuel production will inevitably add to GHG emissions (although emissions from old coal-fired plants will be phased out).

48.

In August 2021, the IPCC released its 6th Assessment Report (AR6).³⁴ In its summary for policymakers,³⁵ the IPCC indicates (among other things) that:

- It is unequivocal that human influence has warmed the atmosphere, ocean and land, and that widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred;³⁶
- The scale of recent changes across the climate system as a whole – and the present state of many aspects of the climate system – are unprecedented over many centuries to many thousands of years;³⁷
- Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has strengthened since AR5;³⁸
- Global surface temperature will continue to increase until at least mid-century under all emissions scenarios considered, and that global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO₂ and other greenhouse gas emissions occur in the coming decades;³⁹
- Many changes in the climate system become larger in direct relation to increasing global warming. They include increases in the frequency and intensity of hot extremes, marine heatwaves, heavy precipitation, and, in some regions, agricultural and ecological droughts; an increase in the proportion of intense tropical cyclones; and reductions in Arctic sea ice, snow

³³ <https://www.climatelinks.org/resources/greenhouse-gas-emissions-factsheet-south-africa>

³⁴ Climate Change 2021: The Physical Science Basis, available online at: <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/>

³⁵ https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf

³⁶ Para A.1

³⁷ Para A.2

³⁸ Para A.3

³⁹ Para B.1

cover and permafrost;⁴⁰

- Continued global warming is projected to further intensify the global water cycle, including its variability, global monsoon precipitation and the severity of wet and dry events;⁴¹
- Many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets and global sea level;⁴²
- From a physical science perspective, limiting human-induced global warming to a specific level requires limiting cumulative CO₂ emissions, reaching at least net zero CO₂ emissions, along with strong reductions in other GHG emissions. Strong, rapid and sustained reductions in CH₄ emissions would also limit the warming effect resulting from declining aerosol pollution and would improve air quality.⁴³

49.

On 9 August 2021 the IPCC issued a press release relating to its 6th Report, which states that:

The report provides new estimates of the chances of crossing the global warming level of 1.5°C in the next decades, and finds that **unless there are immediate, rapid and large-scale reductions in greenhouse gas emissions, limiting warming to close to 1.5°C or even 2°C will be beyond reach.**⁴⁴

50.

Also on 9 August 2021, UN Secretary-General António Guterres described the AR6 report as nothing less than "**a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable**".⁴⁵ Guterres is reported as noting that the internationally-agreed threshold of 1.5 degrees above pre-industrial levels of global heating was perilously close, and that we are at imminent risk of hitting this threshold in the near term. Guterres is indicated as advising that the only way to prevent exceeding this threshold, is by urgently stepping up our efforts, and pursuing the most ambitious path. The UN chief is reported as stating that solutions are clear: "*Inclusive and green economies, prosperity, cleaner air and better health are possible for all, if we respond to this crisis with solidarity and courage*". Ahead of the COP26 climate conference in Glasgow in November, Guterres stated that all nations - especially the advanced G20 economies – needed to join the net zero emissions coalition, and reinforce their promises on slowing down and reversing global heating "*with credible, concrete, and enhanced*

⁴⁰ Para B.2

⁴¹ Para B.3

⁴² Para B.5

⁴³ Para D.1

⁴⁴ <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>

⁴⁵ <https://news.un.org/en/story/2021/08/1097362>

Nationally Determined Contributions (NDCs)" that lay out detailed steps.

51.

Having regard to the global 'Climate Emergency'⁴⁶ and South Africa's international commitment⁴⁷ to 'working with others to ensure temperature increases are kept well below 2°C above pre-industrial levels, which could include a further revision of the temperature goal to below 1.5°C in light of emerging science'⁴⁸ by reducing GHG emissions, the proposed Karpowership projects will inevitably add to the South Africa's overall GHG emissions (South Africa's energy sector currently contributes an estimated 84% percent to the country's overall GHG emissions).⁴⁹ No information is provided in the Karpowership companies' gas license applications indicating the extent of any impact the Karpowership projects may have on South Africa's ability to meet its revised NDCs.

52.

As indicated earlier in these comments, Shell has confirmed that it is the exclusive supplier of LNG to the three Karpowership projects.⁵⁰ It has recently been reported that a court in the Hague has ordered Royal Dutch Shell (Shell) to cut its global carbon emissions by 45% by the end of 2030 compared with 2019 levels.⁵¹ The Green Connection is concerned that by entering into a long-term agreement to supply Karpowership SA with LNG, the Shell Group is failing to act to reduce its global carbon emissions. Over the next twenty years, it is likely that multinational companies like Shell will come under increasing regulatory and public pressure to cut carbon emissions. The Green Connection also anticipates that carbon taxes (nationally and internationally) are likely to increase, while internationally measures aimed at curbing trade in carbon-intensive goods and imports from carbon-intensive jurisdictions are also likely to become more common.⁵² This increases the risk that the Karpowership projects using fossil gas will become increasingly expensive and unsustainable over a 20-year contract period.

⁴⁶ <https://www.unenvironment.org/explore-topics/climate-change/facts-about-climate-emergency>

⁴⁷ As a party to the United Nations Framework Convention on Climate Change (UNFCCC) that ratified the Kyoto Protocol and adopted the Paris Agreement.

⁴⁸ See for example South Africa's *Intended Nationally Determined Contribution (INDC)*, available online at: <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/South%20Africa%20First/South%20Africa.pdf>

⁴⁹ <https://www.climatelinks.org/resources/greenhouse-gas-emissions-factsheet-south-africa>

⁵⁰ <https://www.engineeringnews.co.za/article/shell-expresses-concern-over-rmipp-p-delays-as-it-confirms-karpowership-sa-partnership-2021-07-13>

⁵¹ For example: Boffey, D., '[Court orders Royal Dutch Shell to cut carbon emissions by 45% by 2030](#)', *The Guardian*, 23 June 2021.

⁵² <https://www.egsa.org.za/general-news/sa-at-risk-from-export-carbon-levies-the-real-economy-bulletin-trends-developments-and-data-third-quarter-2020/>

53.

Should NERSA grant the Karpowership companies the gas licenses applied for, South Africa will be locked-in to projects that will generate cumulative emissions of at least 54.33 million tons of CO₂e. South Africa's National Climate Change Response White Paper cautions that policy decisions on new infrastructure investments must consider climate change impacts to avoid the lock-in of emissions-intensive technologies into the future.⁵³

54.

Given the risks highlighted above, it is submitted that issuing the various gas licenses to the Karpowership companies will lock-in South Africa to 20-years of greenhouse gas (primarily methane) emissions, and will be in tension with the objective of ensuring that the interests and needs of present and future generations of electricity customers are safeguarded and met, having regard to (among other things) the long term sustainability of the gas transmission, storage, distribution, liquefaction and re-gasification facilities and the provision of sustainable gas transmission, storage, distribution, liquefaction, re-gasification and trading services within the broader context of economic energy regulation.

55.

The Green Connection respectfully submits that NERSA needs to consider the climate change implications of granting the various gas licenses to the Karpowership companies in order to discharge its duty to act in the public interest, to ensure that its decision is consistent with the Constitution and all applicable laws, and to ensure that its decision is in the interests of current and future generations and the public in general. The Green Connection submits further that NERSA also needs to ensure it has regard to and is guided by the NEMA section 2 environmental management principles when considering its decisions on the Karpowership companies' gas license applications, including (but not limited to) the following:

- Sustainable development requires that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions;⁵⁴

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https://www.environment.gov.za/sites/default/files/legislations/national_climatechange_response_whitepaper.pdf

⁵⁴ NEMA, s2(4)(a)(vii).

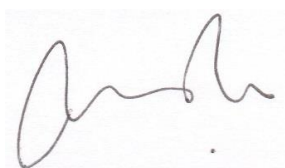
- Sustainable development requires that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied;⁵⁵
- Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle;⁵⁶ and
- Global and international responsibilities relating to the environment must be discharged in the national interest.⁵⁷

56.

H. CONCLUSION

For the reasons set out above, the Green Connection submits that NERSA should refuse the Karpowership Companies' gas license applications.

Signed at Durban this 5th day of February 2022



Adrian Leonard Pole

⁵⁵ NEMA, s2(4)(a)(viii).

⁵⁶ NEMA, s2(4)(e).

⁵⁷ NEMA, s2(4)(n).