

**THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA**

Electricity Licensing, Compliance and Dispute Resolution Department  
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**For the attention of:** Mr. Tshepo Ramokoka

**Per email:** [tshepo.ramokoka@nersa.org.za](mailto:tshepo.ramokoka@nersa.org.za)

29 October 2021

**Re: THE GREEN CONNECTION - REPRESENTATIONS ON AND OBJECTIONS TO  
KARPOWERSHIP SA APPLICATIONS FOR ELECTRICITY DISTRIBUTION CONNECTION  
FACILITY LICENSES (SALDANHA, COEGA & RICHARDS BAY)**

1.

**A. INTRODUCTION**

These representations objecting to the Karpowership SA Saldanha Bay (RF) Proprietary Limited, Karpowership SA Richards Bay (RF) Proprietary Limited and Karpowership SA Coega (RF) Proprietary Limited electricity distribution connection facility license applications (hereinafter referred to collectively as the 'Karpowership license applications') are made on behalf the Green Connection.

2.

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 are an integral part of sustainable development.

3.

### C. PROCEDURAL IRREGULARITIES

Public notices to comment on the Karpowership license applications were published on Twitter, as well as in the Sowetan (on 18 October 2021) and the Business Day (on 18 October 2021) newspapers.

4.

These notices indicate that the notice to comment is in terms of Regulation 18 of the Promotion of Administrative Justice Act, 2000 (PAJA).

5.

It is assumed that the reference to Regulation 18 is a reference to Regulation 18 of the *Regulations on fair administrative procedures*<sup>1</sup> published under PAJA.

6.

Regulation 18 provides as follows:

#### **Publication**

- (1) Information concerning the proposed administrative action must be published by way of notice:
  - (a) if the administrative action affects the rights of the public throughout the Republic, in the **Government Gazette and a newspaper which is distributed, or in newspapers which collectively are distributed, throughout the Republic**; or
  - (b) if the administrative action affects the rights of the public in a particular province only, in the Provincial Gazette of that province and a newspaper which is distributed, or in newspapers which collectively are distributed, throughout that province; or
  - (c) if the administrative action affects the rights of the public in a specific area only, in a newspaper which is distributed in that specific area.
- (2) A notice published in terms of subregulation (1) must include:
  - (a) **an invitation to members of the public to submit comments** in connection with the proposed administrative action to the administrator concerned **on or before a date specified in the notice, which date may not be earlier than 30 days from the date of publication of the notice**;
  - (b) a caution that comments received after the closing date may be disregarded;

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<sup>1</sup> GNR.1022 of 31 July 2002.

- (c) the name and official title of the person to whom any comments must be sent or delivered; and
  - (d) the:
    - (i) work, postal and street address and, if available, also an electronic mail address;
    - (ii) work telephone number; and
    - (iii) fax number, if any,
 of the person contemplated in paragraph (c).
- (3) A notice published in terms of subregulation (1) must:
- (a) contain sufficient information about the proposed administrative action to enable members of the public to submit meaningful comments; and
  - (b) **when appropriate, specify a place or places where, and the hours within which, further information concerning the proposed administrative action will be available for public scrutiny.**
- (4) A notice published in terms of subregulation (1) (a) and (b) in a newspaper may, notwithstanding the provisions of subregulations (2) and (3), only contain:
- (a) a concise statement of the proposed administrative action;
  - (b) the name, official title, contact telephone number and physical address of the person from whom further information on the proposed administrative action and the administrative procedure can be obtained; and
  - (c) **a note that a more detailed notice concerning the proposed administrative action appears in the Government Gazette or Provincial Gazette, as the case may be.**
- (5) If a notice published in terms of subregulation (1) specifies a place or places where further information about the proposed administrative action will be available for public scrutiny, access to that information must be allowed from the date on which the notice is published until the closing date for comment, with the exclusion of Saturdays, Sundays and public holidays.
- (6) **In order to ensure that a proposed administrative action is brought to the attention of the public, an administrator may, in addition, publicise the information referred to in subregulations (1) to (5) by way of communications through the printed or electronic media, including by way of press releases, press conferences, the Internet, radio or television broadcasts, posters or leaflets.**

7.

### ***Inadequate Notice Period***

It is clear from Regulation 18(2)(a) that a notice published in terms of subregulation (1) **must** include an invitation to members of the public to submit comments in connection with the proposed administrative action to the administrator concerned on or before a date specified in the notice, **which date may not be earlier than 30 days from the date of publication of the notice.**

8.

As mentioned above, the notices published in the Sowetan and the Business Day were published on 18 October 2021.

9.

The closing date for submission of written comments is indicated in the notices as 29 October 2021. This date is clearly earlier than 30 days from the date of publication of the notices.

10.

In light of the above, the notice does not comply with Regulation 18(2)(a), renders the notification irregular, and constitutes procedurally unfair administrative action by NERSA.

11.

***Notice not published in the Government Gazette***

Regulation 18(1)(a) stipulates that if the administrative action affects the rights of the public throughout the Republic, information concerning the proposed administrative action **must be published by way of notice in the Government Gazette** and a newspaper which is distributed, or in newspapers which collectively are distributed, throughout the Republic.

12.

While notices have been published on Twitter and in the Sowetan and Business Day newspapers, no notices appear to have been published in the Government Gazette.<sup>2</sup>

13.

In light of the above, the notice does not comply with Regulation 18(1)(a), renders the notification irregular, and constitutes procedurally unfair administrative action by NERSA.

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<sup>2</sup> On 26 October 2021, the Green Connection's attorneys emailed NERSA asking it to advise us of the date when the notice was first published, and in what media. On 27 October 2021 NERSA responded by email, referring to (and attaching) the notices published on 18 October 2021 in the Sowetan and Business Day newspapers. No mention was made of publication of the notice in the Government Gazette. A search of the government website where such notices are published was conducted by the Green Connection's attorney, and no such notice published in the Gazette could be identified.

14.

***No local notices of license applications***

Regulation 18(6) empowers NERSA, in order to ensure that a proposed administrative action is brought to the attention of the public, to publicise the information referred to in subregulations (1) to (5) by way of communications through the printed or electronic media, including by way of press releases, press conferences, the Internet, radio or television broadcasts, posters or leaflets.

15.

While a copy of the notice was published on Twitter, in the Sowetan and in the Business Day, the Green Connection is not aware of the Karpowership applications being published by other means to ensure that the applications are brought to the attention of local communities in Saldanha, Coega and Richards Bay.

16.

The Green Connection submits that in order for the Karpowership license application notices to be procedurally fair, NERSA should exercise the powers given to it by publicising the application in the local areas concerned (such as through adverts placed in local newspapers, radio broadcasts, community posters and leaflets).

17.

**D. ENVIRONMENTAL AUTHORISATIONS REFUSED**

Karpowership indicates in its applications that environmental approval applications were submitted on 26 April 2021.<sup>3</sup>

18.

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

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<sup>3</sup> Karpowership license applications, section I.

19.

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

20.

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

21.

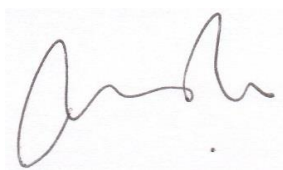
#### **E. CONCLUSION**

For the reasons set out above, the Green Connection submits that the notices published in respect of the Karpowership license applications are defective and procedurally flawed, constitute procedurally unfair administrative action, and prevent meaningful public participation.<sup>4</sup> In addition, the Green Connection submits that it would be irregular and irrational for NERSA to grant electricity distribution connection facility licenses to Karpowership given that environmental authorisation has been refused.

22.

Given the defective notice given by NERSA, the Green Connection reserves its right to make further submissions on substantive issues in an appropriate forum at a later date.

Signed at Durban this 29<sup>th</sup> day of October 2021



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Adrian Leonard Pole

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<sup>4</sup> It is relevant to note that that National Environmental Management Act, 1998 (NEMA) principles, which apply throughout the Republic to the actions of all organs of state which may significantly affect the environment, stipulate 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 (section 2(4)(f)).