

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

"X"
Winnell
4/6/2024

Case No: 23339/22

BEFORE THE HONOURABLE JUSTICE WINDELL

Pretoria, on TUESDAY, 04 JUNE 2024

In the matter between:

THE GREEN CONNECTION NPC
(Registration number: 2021/773490/08)



Applicant

and

NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

First Respondent

MINISTER OF MINERAL RESOURCES AND ENERGY

Second Respondent

KARPOWERSHIP SA SALDANHA BAY (RF) PROPRIETARY LIMITED
(Registration number: 2020/754347/07)

Third Respondent

KARPOWERSHIP SA COEGA (RF) PROPRIETARY LIMITED
(Registration number: 2020/754336/07)

Fourth Respondent

KARPOWERSHIP SA RICHARDS BAY (RF) PROPRIETARY LIMITED
(Registration number: 2020/754352/07)

Fifth Respondent

ESKOM HOLDINGS SOC LTD
(Registration number: 2002/015527/30)

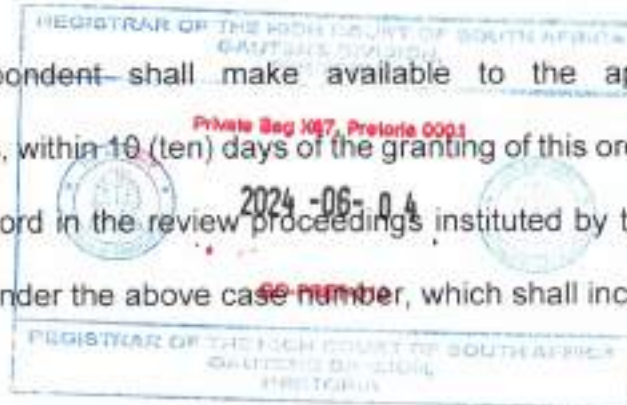
Sixth Respondent

Winnell
4/6/2024

DRAFT ORDER

BY AGREEMENT BETWEEN THE APPLICANT, FIRST RESPONDENT AND THIRD TO FIFTH RESPONDENTS, IT IS ORDERED AS FOLLOWS:

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 25 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.


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3. The applicant's legal representatives may disclose the full record including any allegedly confidential documents to:

3.1. Adrian Pole (Legal advisor for the applicant);

3.2. Liziwe McDaid (Board member of the applicant);

3.3. Vuyelwa Nandipha Masango (Employee of the applicant and the deponent to the founding affidavit in the above proceedings),

3.4. Mr Hilton Trollip (the applicant's expert witness), and

3.5. Ms Karin Pretorius (the applicant's correspondent attorney).

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 3.1 to 3.5 above, and the Judge presiding in the main application.



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14/06/2024

5. The applicant reserves the right to argue at the hearing of the review that the entire Rule 53 Record, including the information regarded as confidential by the first respondent and the third to fifth respondents, be made available to the general public.
6. The first and third to fifth respondents are directed, jointly and severally, the one paying the others to be absolved, to pay the costs of this interlocutory application incurred up to 17 May 2024, including the costs of two (2) counsel, one of whom being senior counsel, on a party and party scale C in respect of costs incurred after 12 April 2024.
7. The first respondent is directed to pay the costs of this interlocutory application incurred after 17 May 2024, including the costs of two (2) counsel, one of whom being senior counsel, on a party and party scale C.



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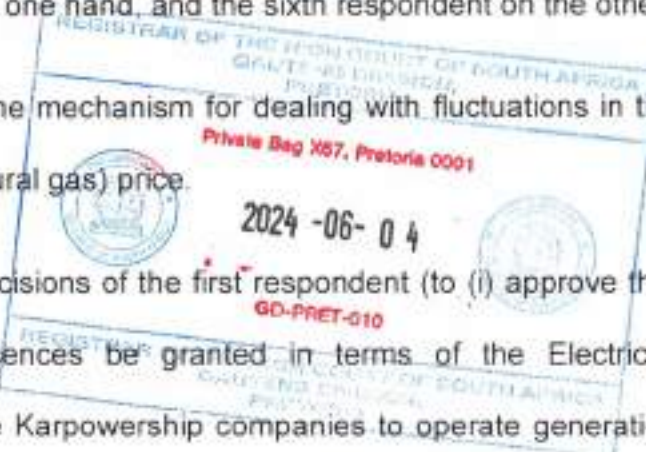
BY ORDER OF THE COURT

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14/06/2024

“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 decisions 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 23339/2022

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.
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 THE GREEN CONNECTION NPC ("TGC"):

1. Adv Peter Hathorn SC (Counsel for TGC);
2. Adv Caroline Rogers (Counsel for TGC);
3. Fiona Bester (Attorney for TGC);
4. Adrian Pole (Legal advisor for TGC);
5. Liziwe McDaid (Board member of TGC);
6. Vuyelwa Nandipha Masango (Employee of TGC and deponent of the founding affidavit in the above proceedings);
7. Hilton Trollip (expert appointed by TGC); and
8. Karin Pretorius (applicant's correspondent attorney).



Signed at _____ on this _____ day of _____ 2024.

[NAME]