



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Dr. Kgosientsho David Ramokgopa
Minister of Electricity and Energy
By Email: kramokgopa@parliament.gov.za;
Tumi.Mthimunye@dmre.gov.za;
Tsakane.Khambane@dmre.gov.za;
Subesh.Pillay@dmre.gov.za;
Subesh@presidency.gov.za

Our ref: IRP/JC/BA
Date: 27 January 2026

Dear Honourable Minister Ramokgopa

RE: PUBLIC CONSULTATION ON MINISTERIAL DETERMINATIONS IN TERMS OF SECTION 34 OF THE ELECTRICITY REGULATION ACT, 2006

1. We write to you on behalf of The Life After Coal campaign (Earthlife Africa, groundWork and the Centre for Environmental Rights); The Green Connection; and The Southern African Faith Communities Environment Institute (SAFCEI).

Implementation of the IRP 2025

2. We note that the Integrated Resource Plan 2025 (IRP 2025), published in October 2025, presents a R2.23-trillion investment plan intended to define South Africa's future energy mix. Cabinet publicly stated in October 2025 that the IRP proposes significant new generation capacity, including 18,250 MW of gas and 5,200 MW of nuclear power.
3. The IRP 2025 explains that section 34 of the Electricity Regulation Act (ERA) was originally designed as the mechanism for implementing the IRP through Ministerial "determinations" specifying the technology, capacity, procurement approach and ownership model for new generation, as aligned with the New Generation Regulations. The IRP also records that, following the Electricity Regulation Amendment Act of 2024, the Minister's powers now extend to determinations for transmission infrastructure and related energy infrastructure, including gas infrastructure.
4. Having regard to the scale of the investment plan and new electricity generation capacity proposals, the implementation of the IRP 2025 through Ministerial determinations will be of immense public importance, implicating (among other things) electricity affordability and a range of socio-economic and environmental rights. It also has significant implications for South Africa's climate change commitments and obligations, as well as the rights of future generations. As civil society organisations with a long history of advocating for environmental and socio-economic justice, as well as for a just energy transition in the context of the global climate crisis, the parties have a special interest regarding South Africa's new electricity generation capacity decisions.

Cape Town: 1st floor, Birkdale 2, River Park, 1 River Lane, Liesbeek Parkway, Mowbray, Cape Town 7700, South Africa
Tel +27 21 447 1647 (Cape Town)
www.cer.org.za

Public Consultation on s34 Determinations

5. Before the 2024 amendments to the ERA, the Minister could make a section 34 determination only **in consultation with** NERSA, which required NERSA's concurrence. Because NERSA could not concur without following the procedurally fair decision-making requirements in section 10(1)(d) of the National Energy Regulator Act (NERA), public consultation was mandatory. This position was confirmed by the Western Cape High Court in *Earthlife Africa Johannesburg v Minister of Energy* (2017) paras 24, 45-46, where the court held that NERSA's concurrence process required public participation.
6. The amended section 34(1), however, now requires the Minister to act **after consultation with** NERSA (and the Minister of Finance), meaning the Minister must seek and consider NERSA's views but is no longer required to obtain its concurrence.

Procedural Fairness / Legality

7. Despite this change, the parties submit that any lawful and procedurally fair determination-making process **must** include public consultation. Sections 3(1) of the Promotion of Administrative Justice Act, 2000 (PAJA) requires administrators to provide affected persons with adequate notice of, and a reasonable opportunity to make representations on, any proposed decision that may materially and adversely affect their rights or legitimate expectations. Section 4(1) of PAJA further requires notice-and-comment or other appropriate participatory procedures when a decision affects the public.
8. Even where PAJA may not strictly apply, the constitutional principle of legality requires that exercises of public power be rational and procedurally rational. Given the scale, cost and long-term implications of determinations under section 34, a process that excludes public participation would not meet this standard.
9. It is respectfully submitted that a failure to undertake a procedurally fair determination-making process will be unlawful and unconstitutional, and that any new electricity generation capacity determinations made in the absence of public consultation will be vulnerable to being set aside on review.

Our request

10. Accordingly, we request confirmation that the parties (and the public) will be given sufficient notice of any proposed section 34(1) determinations and an opportunity to make meaningful representations before such determinations are finalised.
11. We look forward to receiving the Honourable Minister's reply at his earliest convenience. The parties reserve their rights.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS



Per: **Dr J Cogger**
Attorney

Direct email: jcogger@cer.org.za