

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No:

In the matter between:

**EARTHLIFE AFRICA – JOHANNESBURG
SOUTHERN AFRICAN FAITH COMMUNITIES’
ENVIRONMENT INSTITUTE**

First Applicant
Second Applicant

and

**THE MINISTER OF ENERGY
THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA
THE NATIONAL ENERGY REGULATOR OF SOUTH
AFRICA
SPEAKER OF THE NATIONAL ASSEMBLY
CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent

NOTICE IN TERMS OF RULE 16A

TAKE NOTICE that the following constitutional issues are raised in the applicants’ affidavit in this application:

1. Whether:
 - a. the First Respondent’s (**Minister’s**) decision on or about 21 September 2014 to sign the Agreement between the Government of the Republic of South Africa and the Government of the Russian Federation on Strategic

Partnership and Cooperation in the fields of Nuclear Power and Industry
(the Russian IGA); and

- b. the Second Respondent's **(President's)** decision on or about 20 September 2014 to authorise the Minister's signature of the Russian IGA; and
- c. the Minister's decision on or about 10 June 2015 to table the Russian IGA before Parliament in terms of section 231(3) of the Constitution;

are unlawful and unconstitutional since they violate sections 217 and 231 of the Constitution, and/or violate the principle of legality and the rule of law enshrined in section 1 of the Constitution?

2. Whether the Minister's decisions on or about 10 June 2015 to:

- a. table the Agreement for Cooperation between the Government of the Republic of South Africa and the United States of America concerning Peaceful Uses of Nuclear Energy before Parliament in terms of section 231(3) of the Constitution; and
- b. table the Agreement between the Government of the Korea and the Government of the Republic of South Africa regarding Cooperation in the Peaceful Uses of Nuclear Energy before Parliament in terms of section 231(3) of the Constitution;

are unlawful and unconstitutional since they violate section 231 of the Constitution?

3. Whether – by virtue of the principle of legality and the rule of law (enshrined in section 1 of the Constitution) and the requirement that administrative action be

procedurally fair (as provided for in section 33 of the Constitution and given effect to in the Promotion of Administrative Justice Act 3 of 2000 (**PAJA**)) – prior to the commencement of any procurement process for nuclear new generation capacity (being at the latest before the appointment of a bid specification committee or persons tasked with drawing up the invitation to bid) and/or the exercise of any powers under section 34(2) of the Electricity Regulation Act 4 of 2006 (**ERA**) in relation to the procurement of nuclear new generation capacity, the Minister and the Third Respondent (**NERSA**) are required in consultation, and in accordance with procedurally fair public participation processes, to have determined that:

- a. new generation capacity is required and that the electricity must be generated from nuclear power and the percentage thereof, in terms of sections 34(1)(a) and (b) of the ERA) – “the ERA nuclear requirement decision”; and
 - b. in terms of section 34(1)(e), read with section 217 of the Constitution, the procurement of such nuclear new generation capacity, must take place in terms of a procurement system that is fair, equitable, transparent, competitive and cost-effective, which must be specified – “the ERA nuclear procurement system decision”?
4. Whether the Minister’s and/or Government’s decisions to facilitate, organise, commence and/or proceed with the procurement of nuclear new generation capacity (including, at least, the decision by the Minister’s and/or Government on

or about May 2015 to appoint a bid specification committee or persons tasked with drawing up the bid invitation, and all related decisions subsequent thereto) and/or any decisions by the Minister to exercise any powers under section 34(2) of the ERA in relation to the procurement of nuclear new generation capacity, prior to the taking of the ERA nuclear requirement decision and the ERA nuclear procurement system decision, are unlawful and unconstitutional since they violate the principle of legality and the rule of law (as enshrined in section 1 of the Constitution, and/or the requirement that administrative action be lawful, reasonable and procedurally fair (as enshrined in section 33 of the Constitution and given effect to by PAJA), section 217 of the Constitution, and section 34 of the ERA?

TAKE NOTICE FURTHER that any interested party may, with the written consent of all the parties to the proceedings, given not later than 20 days after this notice has been filed, be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

TAKE NOTICE FURTHER that the written consent referred to above shall, within five days of its having been obtained, be lodged with the registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

TAKE NOTICE FURTHER that the terms and conditions agreed upon may be amended by the court.

TAKE NOTICE FURTHER that if the interested party is unable to obtain the written

consent as contemplated herein, he or she may, within five days of the expiry of the 20-day period prescribed above, apply to the court to be admitted as an *amicus curiae* in the proceedings. Such application shall-

- (a) briefly describe the interest of the *amicus curiae* in the proceedings;
- (b) clearly and succinctly set out the submissions which will be advanced by the *amicus curiae*, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist the court and are different from those of the other parties; and
- (c) be served upon all parties to the proceedings.

TAKE NOTICE FURTHER that any party to the proceedings who wishes to oppose an application to be admitted as an *amicus curiae*, shall file an answering affidavit within five days of the service of such application upon such party. The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

DATED at _____ on this the _____ day of **OCTOBER 2015**.

ADRIAN POLE ATTORNEY

Applicants' attorney

Suite 7 Village Office Park

2 Inkonka Road

KLOOF

Kwa-Zulu Natal

Tel: 031 7642593

Fax: 031 764 7934

E-mail: adrian@adrianpole.co.za

C/O LEGAL RESOURCES CENTRE

Per: ANGELA ANDREWS

Applicants' correspondent attorneys

3rd Floor Greenmarket Place

54 Shortmarket Street

CAPE TOWN

Tel: 021 481 3000

Fax: 021 423 0935

E-mail: angela@lrc.org.za

Ref: Ms Angela Andrews

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
KEEROM STRAAT
CAPE TOWN

AND TO: **THE MINISTER OF ENERGY**
First Respondent
Parliament Building

7th Floor

120 Plein Street

Cape Town

c/o The State Attorney

4th Floor

Liberty Life Building

22 Long Street

CAPE TOWN

AND TO: **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Second Respondent

Tuynhuis Building

Parliament Street

Cape Town

c/o The State Attorney

4th Floor

Liberty Life Building

22 Long Street

CAPE TOWN

AND TO: **THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA**

Third Respondent

Kulawula House

526 Madiba Street

Arcadia

PRETORIA

AND TO: **SPEAKER OF THE NATIONAL ASSEMBLY**

Fourth Respondent

Room E118

Parliament Building

Parliament Street

CAPE TOWN

AND TO: **CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES**

Fifth Respondent

Room S11

Parliament Building

Parliament Street

CAPE TOWN