

**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 OF MOTION

TAKE NOTICE THAT the Applicants intend to make application to this Court, on a preferent date as allocated by the Judge President, for an order in the following terms:

1. Declaring that:
 - 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);

- 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 unconstitutional and unlawful, and are reviewed and set aside.

2. Declaring that 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 Republic of 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, and are reviewed and set aside.

3. Declaring that 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. Declaring that 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 appointment 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, and are reviewed and set aside.
5. Those Respondents who oppose the relief sought herein are to pay the costs of this application, jointly and severally, the one paying, the other to be absolved.
6. Further and/or alternative just and equitable relief.

The First and Second Respondents are called upon, in terms of Uniform Rule of Court 53(1)(a) to show cause why the aforesaid decisions should not be set aside.

In terms of Uniform Rule of Court 53(1)(b) the First and Second Respondents are called upon, within **10 days** of receipt of this Notice of Motion, to dispatch to the Registrar the records of their respective decisions that are sought to be reviewed (including all correspondence (including e-mails), reports, memoranda, documents, evidence,

transcripts of recorded proceedings and other information serving before the them), together with such reasons as the First Respondent and Second Respondent are by law required or may desire to give or make, and to notify the Applicants' attorneys that it has done so.

In terms of Uniform Rule of Court 53(4), the Applicants may within 10 days of receipt of the record from the Registrar, amend, add to, or vary the terms of their Notice of Motion and supplement their founding affidavit, by delivery of a notice and accompanying affidavit.

If any of the Respondents wish to oppose the relief sought in this notice of motion, they are required:

- (a) within **5 days** of receipt of this notice of motion or any amendment thereto as contemplated in Rule 53(4), to deliver a notice to the Applicants' attorneys that such Respondents intend to oppose, and appoint an address within eight kilometres of the office of the Registrar at which the Respondents will accept notice and service of all process in such proceedings; and
- (b) within **15 days** of the expiry of the time period referred to in Uniform Rule of Court 53(4), deliver such affidavits as the Respondents may desire in answer to the allegations made by the Applicants.

TAKE NOTICE FURTHER that the accompanying founding affidavit of PHILLIPINE LEKALAKALA, and the annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the Applicants have appointed the address of their

Attorneys as set out below, at which they will accept notice and service of all process in these proceedings.

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

ADRIAN POLE ATTORNEY

Applicants' attorney

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KLOOF

Kwa-Zulu Natal

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C/O LEGAL RESOURCES CENTRE

Per: ANGELA ANDREWS

Applicants' correspondent attorneys

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54 Shortmarket Street

CAPE TOWN

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Fax: 021 423 0935

E-mail: angela@lrc.org.za

Ref: Ms Angela Andrews

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