



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

ACTING EXECUTIVE MAYOR

Ian Neilson
Acting Executive Mayor

T: 021 400-1306 F: 086-5886-184 M: 083-306-6730
E: Ian.Neilson@capetown.gov.za

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Minister of Mineral Resources and Energy
Mr Gwede Mantashe
Corner of Meintjies and Francis Baard Streets
Sunnyside
Pretoria

Dear Minister Gwede Mantashe

**COURT APPLICATION SET DOWN FOR HEARING ON 11 AND 12 MAY 2020 IN NORTH
GAUTENG HIGH COURT CASE NO. 51765/2017
CITY OF CAPE TOWN'S REQUEST FOR A DETERMINATION IN TERMS OF SECTION 34 OF
THE ELECTRICITY REGULATION ACT NO.4 OF 2006 ("THE DETERMINATION")**

I refer to the media statement released by your department on 10 December 2019, and more specifically your intention to promulgate section 34 determinations as an intervention to the electricity and energy challenges facing the country. A copy of the media statement is annexed hereto for ease of reference.

During November 2015 the City of Cape Town applied via a letter to the then Minister of Energy, Ms T Joemat-Peterson, for a determination in terms of Section 34 of the Energy Regulation Act 4 of 2006, designating the City of Cape Town as a purchaser of electricity from independent power producers. A copy of the letter is annexed hereto marked "X1".

In response to our letter, the Department of Energy requested certain particulars relating to the City of Cape Town's plan and on 1 December 2015 the City of Cape Town provided the Department with the particulars requested. On 1 December 2015, the Department of Energy confirmed that no further information was required. Despite this, the City of Cape Town received no feedback on the status of its request for a section 34 determination.

On 18 February 2016 and 29 September 2016, the previous Mayor for the City of Cape Town pressed and urged the Minister to grant the City of Cape Town's application for a determination. A copy of the letters are annexed hereto marked "X2" and "X3", respectively. The previous Mayor and the Minister met during November 2016 and the Minister advised that she was considering the City of Cape Town's request for a determination and would respond thereto during early 2017.

When no response was forthcoming from the Minister by the end of January 2017, the Mayor forwarded a letter to the Minister on 3 February 2017, requesting an urgent meeting in an attempt to

finalise the long outstanding request of the City of Cape Town. A copy of the letter is annexed hereto marked "X4".

The City of Cape Town, having received no positive feedback from the Minister, sought legal advice and took a legal opinion from Advocate W Trengove SC. Advocate W Trengove advised the City of Cape Town that it did not require a determination to implement its plan to purchase renewable energy from one or more independent power producers "IPP's".

Despite the opinion and whilst knowing that a Determination is not necessary, the Mayor on 5 May 2017, in an attempt to promote co-operation between the City of Cape Town and the Minister, requested that the Minister provide a Determination as requested. A copy of the letter is annexed hereto marked "X5".

On 24 May 2017, Ms Kubayi, the successor of Ms T Joemat-Pettersson advised the City of Cape Town that a hold would be placed on the issuing of all determinations. A copy of the letter forwarded to the Mayor is annexed hereto marked "X6".

Furthermore, on 7 June 2017, NERSA advised the City of Cape Town that it could not license an IPP to produce new generation capacity without a ministerial determination. A copy of NERSA's letter is annexed hereto marked "X7".

The City of Cape Town having reached a dead end, launched an application in the High Court of South Africa, Gauteng Division, Pretoria, under case number 51765 / 2017 ("**High Court Application**"), wherein NERSA and the Minister of Energy are cited as Respondents, for the following order:

1. That it is declared that a determination by the Minister of Energy in terms of s34 of the Electricity Regulation Act No.4 of 2006 ("the Act") is not required for an independent power producer to create new capacity for the generation of electricity; to produce electricity by the capacity so created; and to sell the electricity so produced to the City of Cape Town.
2. If it is held that such a determination is required, then the City of Cape Town claims an order declaring section 34 of the Act unconstitutional and invalid.
3. If it is held that such a determination is required but section 34 of the Act is not declared invalid with immediate effect, then the City of Cape Town claims an order that the Minister of Energy determine the City of Cape Town's application for such a determination, made on 3 November 2015, within one month of the order.

The High Court Application is set down for hearing on 11 and 12 May 2019. In light of recent intermittent electricity supply across the country, the City of Cape Town intends approaching the Deputy Judge President of the Gauteng High Court for an expedited urgent date for the hearing of the High Court Application.

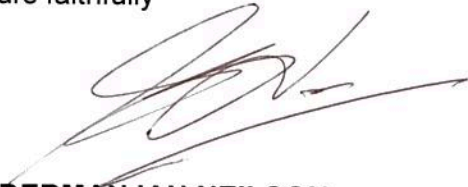
In order to avoid protracted and costly litigation of a matter which will garner massive public interest, the City of Cape Town requests that you consider and approve the request for a determination dated 3 November 2015.

The City of Cape Town has noted your willingness to create necessary interventions as referred to in the Department of Energy's media statement dated 10 December 2019, and herewith affords you the opportunity to give practical effect to the media statement, by way of implementation.

Kindly urgently advise whether you will consider our request for a determination, and if so, when do you anticipate that we may receive an outcome to our application.

We await your urgent reply.

Yours faithfully

A handwritten signature in dark ink, appearing to be 'IAN NEILSON', written in a cursive, flowing style.

**ALDERMAN IAN NEILSON
ACTING EXECUTIVE MAYOR**