

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

Case No: 19529/15

In the matter between:

EARTHLIFE AFRICA – JOHANNESBURG	First Applicant
SOUTHERN AFRICAN FAITH COMMUNITIES’ ENVIRONMENT INSTITUTE	Second Applicant

and

THE MINISTER OF ENERGY	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Third Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Fourth Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fifth Respondent

AMENDED 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.
 - a. Declaring that the determination under section 34(1) of the ERA gazetted on 21 December 2015 (GN 1268, GG 39541) in relation to the requirement and procurement of nuclear new generation capacity, made by the Minister on 17 December 2013, with the concurrence of NERSA given on 11 November 2013, is unlawful and unconstitutional, and is reviewed and set aside.
 - b. Setting aside any Request for Proposals issued by the Department of Energy pursuant to the aforesaid determination.
 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, with the President, the Minister and the NERSA to be jointly and severally liable for the costs on an appropriate punitive scale as determined by the Court in respect of all, alternatively a portion of, the costs.
 6. Further and/or alternative just and equitable relief.

TAKE NOTICE THAT if any of the Respondents, that have not yet filed notices of intention to oppose, wish to oppose the relief sought in this amended notice of motion, they are required:

- (a) within **5 days** of receipt of this amended notice of motion, 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 delivery of their notices of intention to oppose, deliver such affidavits as the Respondents may desire in answer to the allegations made by the Applicants.

TAKE NOTICE THAT, the President and the Minister, who have already delivered a notice of intention to oppose, must deliver such affidavits as they may desire in answer to the allegations made by the Applicants, within **20 days** of receipt of this amended notice of motion and the accompanying supplementary founding affidavit.

TAKE NOTICE FURTHER that the accompanying supplementary founding affidavit of **PHILLIPINE LEKALAKALA**, and the annexures thereto, and her previously delivered founding affidavit, 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 MARCH 2016.

ADRIAN POLE ATTORNEY

Applicants' attorney

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C/O LEGAL RESOURCES CENTRE

Per: ANGELA ANDREWS

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TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT

KEEROM STREET
CAPE TOWN

AND TO: THE STATE ATTORNEY PRETORIA

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Per: Mr Eben Snyman
Ref: 8028/2015/Z46

c/o THE STATE ATTORNEY, CAPE TOWN

4th Floor
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CAPE TOWN
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Per: A Marsh-Scott
Ref: 3081/15/P19

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

Third Respondent
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Arcadia
PRETORIA

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

Fourth Respondent
Room E118
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AND TO: **CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES**

Fifth Respondent
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