



JULY NEWSLETTER 2019

Dear Readers,

We hope you have had a warm month of July!



The July edition of our newsletter looks at updates in the energy, conservation and water sectors while also focussing on recent legal notices and amendments.

NATIONAL LEGISLATION

❖ **NATIONAL WATER ACT 36 OF 1998**

Gen Notice 383 in GG 42576 of 12 July 2019 - Authorisation of the continued application of the general authorisation published in GN 665 in GG 36820 of 6 September 2013, until the new general authorisation for waste related activities is gazette

❖ **PLANT BREEDERS' RIGHTS ACT 15 OF 1976**

GN 970 in GG 42576 of 12 July 2019 - South African Plant Variety Journal

❖ **NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998**

GNs 960 & 961 in GG 42561 of 5 July 2019 - Notice of the requirement to submit a report generated by the national web based environmental screening tool

❖ **MARINE LIVING RESOURCES ACT 18 OF 1998**

GN 989 in GG 42584 of 19 July 2019 - Recognition of the Nearshore Crayfishers Association as an interest group for the West Coast rock lobster sector in terms of s. 8 of the Act

FOR COMMENT

❖ **MINERAL AND PETROLEUM RESOURCE DEVELOPMENT ACT 28 OF 2002**

GN 977 in GG 42576 of 12 July 2019 - Proposed further investigations to confirm the results of previous geoscientific surveys on geochemical anomalies in or under land for the possible exploration and exploitation thereof

❖ **DRAFT NATIONAL PORTS AMENDMENT BILL, 2019**

Gen Notice 372 in GG 42574 of 11 July 2019

PROVINCIAL LEGISLATION

❖ **GAUTENG**

For Comment

RATIONALISATION OF LOCAL GOVERNMENT AFFAIRS ACT 10 OF 1998

LAN 1265 in PG 216 of 10 July 2019 - City of Johannesburg Metropolitan Municipality - Amendment of the Joburg Market By-laws

❖ **WESTERN CAPE**

Extension of comment period

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

PN 76 in PG 8121 of 5 July 2019 - Draft Western Cape Biodiversity Bill, 2019

SA's energy blueprint in limbo as key stakeholders deadlock

28 June 2019 by Melanie Gosling

South Africa's draft integrated resource plan, the blueprint for the country's electricity mix, has been "stuck" in Nedlac discussions for months because of deep ideological differences that experts say are preventing parties from reaching agreement on the final version.

Some energy experts say the fear of job losses in the coal sector is at the root of the lack of consensus to a plan that moves away from a dominance of coal to more renewables and gas, and say unless government can lead the way by showing how this transition will be managed to minimise job losses, it will go nowhere.

Others suggest the hold-up may be deliberate from those sectors to whose advantage it is to maintain the status quo with no "unbundled" Eskom and the dominance of coal. What they agree on is that if South Africa remains stuck in a coal economy while the rest of the world is moving away from it, we will be left behind, grinding on until eventually it becomes too expensive to extract coal and those jobs will disappear anyway – but the overall losses to South Africa would be far greater than if the transition had been managed.

Jesse Burton of UCT's Energy Research Centre said the move to a low carbon economy was underway globally and was inevitable. Managed properly locally, it could be harnessed to be a major job creator and new development path.

However, Burton said it was legitimate for coal workers to oppose the IRP if they saw it as something that threatened their jobs in the move away from coal to increased renewables.

Currently coal provides around 90% of electricity and renewables 4.8%.

The draft IRP's envisaged electricity mix by 2030 will be 46% coal, 25% renewables, 16% gas, 6% hydro, 4% pumped storage plus the 2.5% nuclear power from Koeberg.

We need the "how"

Burton said government needed to develop a clear and workable plan on how the move to a low carbon economy would be implemented on the ground.

"We need the 'how' spelled out. It is not enough to say that renewable energy creates more jobs. We need to see plans to put renewable energy in the areas in Mpumalanga where coal is now. It is very clear that government has not created the conditions for workers to see that," Burton said.

The scale of what the low carbon economy could develop into, if implemented properly, was huge.

"Because of this the IRP should be viewed as part of South Africa's development pathway, but at the moment it is just this thing, stuck in Nedlac. Government needs to take the lead in showing how this will be implemented, but we are not seeing that," Burton said.



David Chown, former chair of the SA Photovoltaic Industry Association, believes the delay at Nedlac must be accepted because of the necessity of getting buy-in for the new electricity plan from all sectors - business, labour, government and community organisations.

"You need that to ensure that six months down the line no one will be saying: 'That's not our plan.' There is a lot of mistrust that comes from a lack of understanding the IRP and it takes time for each party to understand it, particularly the technical stuff, and go back to their constituents."

Chown says any major change is coupled with fear.

"The fear factor is big. It dominates the discussion because of the assumption that we're going to have to shed jobs in the move away from coal. It does not necessarily mean there will be job losses but it will mean skills needs to change and people will need to be retrained. This needs to be explained and made tangible to people.

“Often the 'how' gets left aside. We are good at plans but very bad at implementing. At a very practical level, if we are to migrate away from coal power, we need to have a bridging transition to new jobs. For instance, building PV plants next to old power stations, so you don't lose those people, you retrain them. The state needs to draft a development agenda. Until you get down to the 'how', you will remain locked in an ideological debate,” Chown said.

Numsa spokesperson Phakamile Hlubi said unions were worried that there was no implementation plan to make the move to a low carbon economy a “just transition”.

She said Numsa understood the need to move away from fossil fuels because of climate change, and had been one of the first unions to say back in 2012 there was a need to make the move towards renewables.

“But the problem is that the government is not doing this in line with a just transition. The Paris Agreement which our country agreed to says these changes will have the most impact on communities and labour and that there must be a general consultative process and solutions must be found to their benefit. Workers from the coal sector must be retrained for renewable energy.

“The problem is our government has embarked on changes and has violated the principle of a just transition,” Hlubi said.

Other governments had managed to make a just transition, she said.

Not pro-coal, pro-jobs

“People have characterised us 'pro-coal'. We're not pro-coal, we're pro-jobs. You have the climate change crisis but to help solve that you can't create a joblessness crisis. We need a sustainable plan.”

Hilton Trollip, electrical engineer and researcher at UCT's Energy Research Centre, said a problem with resisting change caused by exogenous factors was that in the end the losses to South Africa would be greater than if the change had been managed.

“Coal is on the way out in the rest of the world. Coal jobs are becoming obsolete. The change is happening and we need to manage the change to limit the negative impacts.”

The two main factors driving the global move to a low carbon economy were climate change and the low cost of wind and solar, now far cheaper the cost of new coal plants.

“So any country that wants a competitive edge will build wind and solar PV, with a bit of gas.”

But it was not as simple as that, Trollip said, because there were factions in the SA energy sector that were fighting against change.

Clear advantages

The progressive sector were those who saw the clear advantages for South Africa in making the economic transition, and included politicians such as President Cyril Ramaphosa and

former energy minister Jeff Radebe.

The sector that wanted no change were those who benefited from the status quo and included owners of coal mines with contracts with Eskom, other Eskom contractors, Eskom itself and the Department of Energy.

Trollip said this sector included former president Jacob Zuma and minerals and energy minister Gwede Mantashe.

“The faction that wants no change operates behind closed doors. Government should be taking the lead in this transition and running with because coal jobs are becoming obsolete. Unfortunately, the government is divided, it is weak and it is still corrupt.”

Trollip believes it is a major problem that the IRP has been stuck with Nedlac for so long, with parties locked in ideological debates rather than putting in place implementation plans.

Scorched earth

“The question is how much gets broken while the fight goes on. Will it be a scorched earth policy? Or can the private sector get creative with government to manage the transition together?” Trollip said.



The draft IRP was released at the end of August. The public was given until the end of October to comment on it before it went to Nedlac. Former energy minister Jeff Radebe initially said it would be finalised before the end of 2018 and later he said by the end of February.

Thomas Garner, chair of the SA Independent Power Producers’ Association, said the private sector, which had so far invested R200bn in South Africa’s renewable energy industry, would not wait forever while parties were locked in an “ideological debate” over the IRP, but would invest in other countries where governments offered certainty.

There had been no movement in the South African renewables sector for years, he said, apart from Ramaphosa and Radebe last year forcing Eskom to sign the agreements made in 2016 between government and 27 independent power producers, which Eskom had unlawfully refused to do.

“That was completing a stalled process, not bringing in more renewables. Since then, there has been zilch. Investors won’t wait around forever.”

Asked to comment, Nedlac said it was unable to say when the IRP process would be completed as that was up to the sectors within the Nedlac organisation.

Supreme Court of Appeal closes another door on coal mine in Mpumalanga protected area

16 July 2019 by CER

The judgment of the Pretoria High Court in favour of the civil society coalition defending a Mpumalanga Strategic Water Source Area has withstood a *third* attempt by mining company Atha Africa Ventures Pty Ltd to have it set aside.

On 9 July 2019, the President of the Supreme Court of Appeal (SCA) dismissed Atha's latest attempt to appeal the High Court's decision to set aside permissions for a new coal mine inside a declared protected environment.



In November 2018, the High Court set aside the 2016 decisions of former Minister of Mineral Resources Mosebenzi Zwane and the late Minister of Environmental Affairs Edna Molewa to permit a new coal mine to be developed inside the Mabola Protected Environment near Wakkerstroom, Mpumalanga, with a punitive costs order against the state respondents.

In January 2019, the Pretoria High Court refused Atha permission to appeal that judgment, and awarded costs in favour of the civil society coalition. The SCA found similarly in April 2019 – that there was no prospect of successfully overturning the High Court judgment, and also awarded costs in favour of the coalition who had opposed Atha Africa's petition.

Not satisfied, in June 2019, Atha petitioned the President of the Supreme Court of Appeal, asking her to reconsider the SCA's April 2019 decision to enable Atha to appeal the High Court Judgment. That petition has now been refused, and Atha has been ordered (again) to pay the civil society coalition's legal costs.

The Mabola Protected Environment was declared under the Protected Areas Act in 2014 by the Mpumalanga provincial government as part of the declaration of more than 70 000 hectares of protected area in the Mpumalanga grasslands. This followed years of extensive research and planning by a number of government agencies, including the Department of Environmental Affairs, the South African National Biodiversity Institute and the Mpumalanga Tourism & Parks Agency.

South Africa's 22 Strategic Water Source Areas, of which the Enkangala-Drakensberg Strategic Water Source Area is one, supply water to South Africa's largest urban centres, agricultural areas and support downstream economies and ecosystems.

Atha, who has stated that its Indian holding company spent \$40 million on acquiring the initial prospecting right, has never produced evidence of any off-take agreements for the coal it hopes to mine. The ecological sensitivity, hydrological importance and planned legal protection for the area that includes the proposed mining area were known by Atha before its acquisition.

The coalition that brought the court application to set aside permissions for the proposed coal mine comprises the Mining and Environmental Justice Community Network of South Africa, groundWork, Earthlife Africa Johannesburg, BirdLife South Africa, the Endangered Wildlife Trust, the Federation for a Sustainable Environment, the Association for Water and Rural Development (AWARD) and the Bench Marks Foundation. The Coalition is represented by the Centre for Environmental Rights.

INTERESTING ENVIRONMENTAL TOPICS

- ❖ ***Stringer D and Biesheuvel T “The world’s biggest diamond mine is closing”***
<https://www.fin24.com/Companies/Mining/the-worlds-biggest-diamond-mine-is-closing-20190712>
- ❖ ***WATCH: Pilots fight rhino-poachers from the skies in Kruger***
<http://www.traveller24.com/Explore/Bush/watch-flying-with-the-sanparks-air-wing-in-the-kruger-national-park-20190712>
- ❖ ***Water sector needs urgent attention to avoid collapse, says Lindiwe Sisulu***
<https://www.timeslive.co.za/politics/2019-07-16-water-sector-needs-urgent-attention-to-avoid-collapse-says-lindiwe-sisulu/>

ABOUT GUNN ATTORNEYS

Gunn Attorneys was established in 2014 by Adam Gunn, leveraging on many years of experience in the natural resources sector. Amongst other things Adam was legal counsel to Ridge Mining and First Uranium Corporation and a partner at Edward Nathan Sonnenbergs and Eversheds. The vision of the firm continues to be to provide exceptional service to our clients in the natural resources sector.



Sonam Mansingh and Adam Gunn outside our offices at 11 Greenway Road, Greenside.

Our contact details:

Adam Gunn

Mobile: +27 72 533 4399

Physical: 11 Greenway Road, Greenside, 2193.

E-mail : adam@gunnattorneys.co.za

professionals@gunnattorneys.co.za

Website: www.gunnattorneys.co.za

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