IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: ~~YES~~/NO
(2)	OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3)	REVISED: **NO**
DATE:	**28 AUGUST 2020 – DELIVERED ELECTRONICALLY**
SIGNATURE:	.....

Case No. 31813/20

In the matter between:

THE VAAL RIVER DEVELOPMENT ASSOCIATION (PTY) LTD — **Applicant**

And

ESKOM HOLDINGS SOC LTD — **First Respondent**

NGWATHE LOCAL MUNICIPALITY — **Second Respondent**

THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA („NERSA“) — **Third Respondent**

THE MINISTER OF ENERGY — **Fourth Respondent**

THE PREMIER OF THE FREESTATE — **Fifth Respondent**

THE MEC: COGTA, FREESTATE	**Sixth Respondent**

And

Case No. 35054/20

In the matter between:

LEKWA RATE PAYERS ASSOCIATION NPC	**Applicant**

And

ESKOM HOLDINGS SOC LTD	**First Respondent**
LEKWA LOCAL MUNICIPALITY	**Second Respondent**
THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA (NERSA)	**Third Respondent**
THE MINISTER OF ENERGY	**Fourth Respondent**
THE PREMIER OF MPUMALANGA	**Fifth Respondent**
THE MEC: COGTA, MPUMALANGA	**Sixth Respondent**

JUDGMENT

MILLAR, A J

1. The applicants are bodies that represent persons who reside and conduct business in towns within the Ngwathe Municipality in the Free State Province and the Lekwa Municipality in the Mpumalanga Province.

2. The applicants both seek interim orders, pending the institution of review proceedings to compel the first respondent – Eskom, the sole supplier of electricity to the municipalities, to *inter alia* restore the supply of electricity to those municipalities at levels enjoyed before this was reduced to within the Notified Maximum Demand ("NMD") as provided for in the contracts entered into between Eskom and the municipalities. The reductions were effected in June/July of this year.

3. Both applications were brought as a matter of urgency. The application in respect of Ngwathe was heard first on the issue of urgency and the court ordered that the parties should approach the office of the deputy judge president for the allocation of a court to hear the matter urgently. Thereafter, the application in respect of Lekwa was brought, substantially on the same grounds and the deputy judge president then ordered that both matters be heard at the same time.

4. After having read all the papers in both matters I formed the *prima facie* view that both applications were urgent and merited a hearing. When the hearing commenced, the applicants proceeded to argue the merits.

5. At the conclusion of the argument for the applicants, counsel for Eskom applied for my recusal. The application was made from the bar and was opposed. The

application was premised on the "reasonable apprehension" that Eskom would not be given a fair hearing.

6. The grounds advanced were firstly, that the propositions that were put to the applicants counsel during his argument were indicative of the matter having been prejudged, secondly that I had used the term "throttle" in regard to the reduction of the electricity supply and that this was a negative term that implied that I had found Eskom to be acting improperly and thirdly that I had chortled when the applicants counsel had pointed out that Eskom had denied the applicants assertion, that repairs to the damaged infrastructure at Ngwathe would cost millions of Rand to repair and had itself stated that the cost was only one hundred and twenty-seven thousand Rand. The last ground advanced was that I had not heard Eskom on urgency.

7. The test for considering an application for recusal is set out in President of the Republic of South Africa v South African Rugby Football Union and Others[1] where it was held:

"The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel."

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[1] 1999 (4) SA 147 (CC) at paragraphs [45] and [48]; Roberts v Additional Magistrate for the District of Johannesburg, Mr Piet van den Berg and Another [1999] 4 All SA 285 (SCA)

8. Propositions are put to counsel for the parties to test the legal and logical soundness of submissions made. When I put submissions to counsel for the applicant, I indicated on each occasion that I would hear counsel for Eskom's submissions on those propositions in due course. The tide of the litigation ebbs and flows during argument and this is how issues are properly ventilated.

9. The use of the word "throttle" by me was in accordance with an ordinary accepted meaning of the word. It was said in the context of it being common cause that Eskom had reduced but not cut off the supply of electricity. I chortled when the relative figures were highlighted. This was an involuntary reaction to the glaring disparity between the two figures and certainly not indicative of any disrespect towards or bias against Eskom. The last ground was somewhat puzzling as I had not yet called upon counsel for Eskom to present his client's case and this point was not pursued with any vigour.

10. After having heard both parties and considered the matter I formed the view that no reasonable, objective or informed person present at the hearing would reasonably apprehend that I would not bring an impartial mind to bear on the case. The application for recusal was refused.

11. Eskom opposed both applications on the basis that it has contractual arrangements to supply electricity to the respective municipalities in which the applicants are situated and that it need only supply electricity within the ambit of

those contracts. The municipalities have been cited in the proceedings. They have not opposed the relief sought by the applicants.

12. The reason that both applications have been brought is in consequence of Eskom's decision to implement and strictly apply the NMD provisions of the bulk electricity supply agreement entered into between the respective municipalities and Eskom.

13. "*Electricity is one of the most common and important basic municipal services and has become virtually indispensable, particularly in urban society.*"[2]

14. The pertinent provisions of the respective agreements relating to NMD are:

14.1 In the case of Ngwathe – entered into on 29 September 2008:

> *"11.1 ESKOM's obligation shall be to make available and supply to the CUSTOMER a supply of electricity up to the maximum capacity represented by the Notified Maximum Demand of the CUSTOMER as increased from time to time by the additional demands of the CUSTOMER notified to and accepted by ESKOM in accordance with the provisions of subclause 11.3*

[2]Joseph and Others v City of Johannesburg and Others 2010 (4) SA 55 (CC) at paragraph [34];Cape Gate v Eskom Holdings 2019 (4) SA 14 (GJ) at paragraph [124] referring to Mkontwana v Nelson Mandela Metropolitan Municipality 2005 (1) SA 530 (CC).

11.2 The Notified Maximum Demand of the CUSTOMER at the date of this Agreement are as per Annexure D.

11.3 Increase in NMD

Should the CUSTOMER at any time require an increased Notified Maximum Demand, it shall give adequate notice in writing to ESKOM of its increased Notified Maximum Demand which is requires ESKOM to supply and the date at which such increased demand is required. Such increased Notified Maximum Demand shall be subject to such terms and conditions as are agreed between the Parties and confirmed in writing in accordance with subclause 22.3; failing such agreement, no increase in the Notified Maximum Demand shall be effected. The said terms and conditions, shall take account not only of the additional capital expenditure incurred or to be incurred by ESKOM in effecting a change in the CUSTOMER's supply but also the additional capacity of ESKOM's transmission / distribution system made available and / or reserved to meet the CUSTOMER's demand."

14.2 In the case of Lekwa - entered into on 7 January 1981:

"5. (a) *The notified maximum demand of the Customer at the date of signing of this Agreement is agreed at 22 260 kilowatts.*

(b) *Should the Consumer at any time require any increase in the notified maximum demand in force from time to time, it shall give adequate notice in writing to Escom of the additional demand which it requires Escom to supply and the date at which such additional demand is required.*

Any increase in the Consumer's notified maximum demand shall be dealt with in terms of the First Schedule to the Licence which is appended hereto as Annexure "B"."

15. The NERSA rules[3] describe NMD and the procedure to be followed in applying for an increase as follows:

"The Notified Maximum Demand (NMD) is a contractual value of demand which binds Eskom and the customer. The developed NMD rules are meant to provide the correct pricing signal that will allow Eskom to plan for the provision of new capacity. According to the agreement, Eskom is required to provide the

[3] The NERSA rules which Eskom attached to its papers and relied upon were in the format of an Executive Summary – this is substantially in accordance with the NMD and MEC rules, Rev 03, July 2015. For ease of reference I have quoted the rules furnished by Eskom.

contracted amount of NMD capacity, and the customer must never exceed this capacity. However, customers do exceed their NMDs and instead of Eskom disconnecting customers for this breach, the NMD penalty is imposed. This is due to the fact a customer that exceeds the NMD does so without permission. They use capacity that is not allocated to their point of delivery, put the network under strain, hamper the ability to do proper network and capacity planning. Moreover they place the network and other customer's electricity supply and Eskom at risk.

Whereas the Maximum Export Capacity (MEC) is an agreement between Eskom and the customer, based on the requirements of the customer and the capacity of the network reserved for that customer's use under normal system conditions in all time periods. Generators are allowed to apply for MEC.

In providing the correct pricing signal, the rules allow for an excess network capacity charge to be raised for monthly exceedances of the NMD. This pricing signal incentivises customers to stay within their contracted demand and/or to notify their demand correctly."

And

"5.4 Customers that request for a change in NMD and/or MEC

5.4.1 Customers that request a change in the NMD and/or MEC shall be considered for a modification of the size of the supply and an amendment to the electricity supply agreement and/or connection and use of system agreement.

5.4.2 A change in NMD and/or MEC is always subject to the available capacity.

5.4.3 A request for a change in the NMD and/or MEC must be made in writing to the licensee, after which licensee will evaluate the request and prepare a quotation which will include the connection charges payable. The connection charges will take into account the following:

a) additional dedicated costs; and

b) upstream sharing charges where applicable.

5.4.4 To effect the change in NMD and/or MEC, the quotation[1] will have to be accepted by the customer, and the licensee should provide the customer with the details of the quotation process. The reasonableness of the quotation should be aligned to the South African Grid Code – The Network Code version 9.0. in Clause 2 (2).

5.4.5 To effect the change in NMD and/or MEC the connection charges will have to be paid and a new supply agreement or an amended agreement will be have to be concluded between the licensee and the customer.

5.4.6 The methodology used for calculating connection charges should be in line with the South African Grid Code – Transmission Tariff Code version 9.0.

5.4.7 The new NMD and/or MEC will apply from the date that the additional capacity is made available by the licensee and the customer shall not be entitled to the additional capacity until the agreed date. "

16. What is clear from both the contracts and the Nersa rules is that the NMD is a mechanism for future consumption and infrastructure planning. It bears no relation to nor does it seem to have been introduced into the contract or the rules for the purpose of providing either of the parties with a lever in respect of any financial dispute with the other.

17. When the respective agreements were entered into the NMD for Ngwathe was 24 300 kVA in 2008. This is made up of 21 000 kVA for the town of Parys and 4300 kVA for Vredefort. For Lekwa the NMD was 22 260 kVA in 1981 and this was increased to 55 000 kVA by 2010. Since 2008 and 2010 respectively there has been no increase in NMD for either of the municipalities.

18. It is not disputed that there has been no increases in the NMD, however, Eskom notwithstanding, supplied electricity in excess of the NMD to both municipalities for an extended period of time.

19. There was nothing before the court to indicate the specific period for which this was done but on the papers before the court this seems as a matter of probability to have been the case for a period of at least one or more years. Given that the

applicants in both cases asserted that the communities have grown over the last 10 years, it is not unreasonable for this to have been so.

20. The implementation of NMD has had the consequence of reducing the amount of electricity actually supplied by Eskom to the respective municipalities. The reduction has had consequences in both municipalities – these became apparent when the National Lockdown levels were eased and economic activity and electricity consumption increased.

21. In the Ngwathe Municipality, during the early part of July, the applicant's members believed that the reduction in electrical supply was as a result of damage to infrastructure. They then discovered that the municipality had been implementing its own rotational load shedding in order to manage the reduced supply from Eskom. The reduction in supply, it was argued has resulted in "an unfolding human and environmental catastrophe". In support of this the applicant pointed to the adverse effects the reduction of electricity has had on the businesses, government departments, old age homes, hospital and private citizens.

22. Significantly the applicant asserted that the reduction in the supply of electricity had resulted in the untreated sewerage of two hundred thousand people flowing into the Vaal River system at a point above where the drinking water for the municipality was extracted.

23. The consequence, besides the fouling of the river system and its affect downstream, has been a deterioration in the quality of the drinking water of the residents with a commensurate increase in the risk of illness. The applicant dealt with this in some detail in its papers. Eskom for its part denied the applicants assertions but tendered no evidence to gainsay them. Instead Eskom took the view that "*All these residents rely on the municipality for electricity, they remain their customers and they should compel the municipality to deliver service delivery. They have a right to enforce and compel the municipality to discharge its constitutional mandate towards them.*"

24. In the Lekwa Municipality, a similar situation to that which prevails in Ngwathe in respect of the adverse effects of the NMD limitation of supply prevails. The situation is however perhaps more dire given the greater industrial demand – this includes businesses in the poultry industry as well as a colliery and the fact that the area is a transport node for coal from the coal fields. This coal is exported but also supplies the Eskom power stations at Majuba and Tutuka.

25. The treatment of sewerage as well as the extraction of drinking water from the Vaal River are also affected. The applicant provided photographs and described the situation as follows:

> *"The spills are caused directly by the continuous NMD-limitations and which is exacerbated by further national load shedding posing a severe health risk*

to all consumers downstream, inclusive of all Gauteng consumers whose drinking water is extracted from the Vaal Dam. Manhole covers in the sewerage network are all currently serving as sewerage disposal points with raw sewerage flowing into streets in Standerton and Sakhile and into the Vaal. Raw sewerage is flowing in rivers of their own from Standerton into the Vaal."

26. The applicants' assertions were met in the case of Lekwa by a bare denial on the part of Eskom and the contention that "*The water crises must be resolved by the municipality and it must be compelled to discharge its constitutional mandate.*"

27. Lekwa is situated on the Vaal River upstream from Gauteng and Ngwathe. This means that the fouling of the river system both before Ngwathe and at Ngwathe means that the effect is amplified by the time that the detritus reaches the Vaal Dam and beyond.

28. The applicants argued that Eskom's implementation of the NMD limitation was administrative action and that it has an obligation to their members and the residents of the municipalities. They also argued that Eskom had failed to consult with or give notice to any of the communities who would be affected by the implementation of NMD. Eskom for its part argued that it had no obligation to the applicants' members or residents and it conceded that it had not consulted with anyone other than the municipalities.

29. It was argued that Eskom was entitled to enforce its rights in terms of the contracts between itself and the municipalities and that if the applicant's rights were affected, then these could only be enforced against the municipalities. It was for this reason that neither applicant was entitled to the relief sought.

30. The requirements for the granting of an interim interdict were expressed in in LF Boshoff Investments (Pty) Ltd v Cape Town Municipality [4] as follows:

"Briefly these requisites are that the applicant for such temporary relief must show –

(a) That the right which is the subject matter of the main action and which he seeks to protect by means of interim relief is clear or, if not clear, is prima facie established, though open to some doubt;

(b) that, if the right is only prime facie established, there is a well-grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing his right;

(c) that the balance of convenience favours the granting of interim relief; and

(d) that the applicant has no other satisfactory remedy."

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[4] 1969 (2) SA 256 © at 267A-F; see also Setlogelo v Setlogelo 1914 AD 221 at 227.

31. I intend dealing with each of these requirements in turn.

32. **Firstly,** do the applicants have a *prima facie* right or a clear right *vis a vis* Eskom, notwithstanding that there is no direct contractual relationship between them and their respective individual members or the wider communities forming part of the municipalities?

33. In Joseph and Others v City of Johannesburg and Others[5] it was held by the Constitutional Court that:

"[18] ....I am of the view that this matter concerns the relationship between a public-service provider and consumers with whom it has no contractual relationship, and that the principles of administrative and constitutional law – and not the law of contract – govern the issues that arise."

34. In Cape Gate (Pty) Ltd and Others v Eskom Holdings Soc Ltd and Others[6] , the full court held:

"[113] It is arguable that reliance on a right to just administrative action under s 33 of the Constitution, as embodied in PAJA[7], has as its precondition the existence of

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[5] 2010 (4) SA 55 (CC) at paragraphs [18] and also [23].In my view therefore

[6] 2109 (4) SA 14 (GJ); see also Resilient Properties (Pty) Ltd v Eskom Holdings Soc Ltd and Others 2019 (2) SA 577 (GJ) at paragraph [74] -*"In my view therefore, in principle Eskom has the power under s 21(5) of the ERA to terminate or interrupt the supply of electricity to GLM given its contractual default. Given the nature and source of Eskom's power, its exercise is, however, administrative action for the purposes of s 33 of the Constitution and PAJA, and constrained, if not by the requirement of reasonableness, then – at best for Eskom – at least by the baseline standard of rationality."*

[7] Promotion of Administrative Justice Act 3 of 2002.

another right, given the definition of 'administrative action': a decision which adversely affects the rights of any person'. Only if such a decision will have been taken, will administrative action have occurred, and only then 'any person' acquires under s 6 of PAJA the right to review such administrative action. In other words, first there is a right that has been adversely affected by the decision, whereupon another right comes into existence – to review the decision.

[114] The obverse proposition is that the right to just administrative action under PAJA avails whenever the right to just administrative action has been 'adversely affected', despite the apparent circuitousness. If the applicants do have rights, other than their PAJA just administrative action rights that will be adversely affected by the interruption decision, this conceptual difference will not be relevant here. Then — provided that such other right has been adversely affected by the decision to interrupt — the applicants have PAJA rights to rationality and reasonableness reviews."

35. The supply of electricity is not specifically provided for as one of the rights set out in the Bill of Rights.[8] The bill of rights does however provide for the right to dignity, life and housing. The supply of electricity is inextricably intertwined with at least these three rights as well as the right to healthcare, food, water and social security.[9]

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[8] Constitution of the Republic of South Africa 1996
[9] Sections 10, 11, 26 and 27 *supra*

36. In Government of the Republic of South Africa v Grootboom and Others[10] the Constitutional Court:

> *"Held, further, that for a person to have access to adequate housing there had to be the provision of land, services (such as the provision of water, the removal of sewage and the financing of all these) and a dwelling. The right also suggested that it was not only the State who was responsible for the provision of houses but that other agents within society had to be enabled by legislative and other measures to provide housing. The State therefore had to create the conditions for access to adequate housing for people at all economic levels of society."*

37. While there is no specific reference in Grootboom to the provision of access to and supply of electricity, it is self-evident that the supply of electricity is the cornerstone upon which all the realization of other rights is based. Homes cannot be built without electricity. Water cannot be pumped and sewerage reticulation cannot operate without electricity. Healthcare and in particular the operation of a healthcare facility which requires at a minimum running water and electricity to operate essential life-saving equipment cannot be realized without the supply of electricity. In essence, the *"inherent dignity"*[11] and very *"right to life"* of the residents of the municipalities is affected by the supply of electricity[12].

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[10] 2001 (1) SA 46 (CC) at paragraph [35] at 67A-C;
[11] Sections 10 and 11 of the Constitution *supra*
[12] See footnote 1 supra

38. The fact that the Eskom relies on the contractual relationship that it has with the respective municipalities does not detract from the fact that it is a state-owned enterprise. It is wholly owned by the state and exists with the benefit of an ostensible monopoly on the supply of electricity, not only for the purpose of generating income for the state but also for the promotion of the rights of individual citizens[13].

39. Accordingly, even though the applicants are themselves not parties to the contracts between Eskom and the municipalities, Eskom's enforcement of the terms of those contracts, in the present instance in regard to limitation of supply to NMD, infringes on the rights of the applicants and offer no defence to the applicants' assertion that Eskom is subject to PAJA.[14]

40. The applicants have the right to the supply of electricity by Eskom. In the present matters however the question is not whether Eskom is supplying electricity or not but rather whether it is supplying sufficient electricity. It seems to me at the very least that enjoying a clear right to be supplied with electricity, the right to be supplied with sufficient electricity to meet the most basic threshold of the individual rights in the bill of rights must at least be a prima facie right. To find otherwise would render those rights and the

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[13] This is specifically provided for in Section 7(2) of the Constitution which provides that : *"The state must respect, protect, promote and fulfil the rights in the Bill of Rights."*

[14] In Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others[14] it was held that:
"[29] ……. Where contracts infringe on the fundamental values embodied in the Constitution, they will be struck down as being offensive to public policy

obligation of the State and its organs – which include Eskom - to fulfil them, nugatory.

41. **Secondly,** it is self-evident that the lack of sufficient electrical supply to the municipalities is wreaking havoc on lives of the residents. The limited electrical supply has had an adverse effect on all basic municipal services – most notably in respect of sewerage reticulation and the provision of clean water. The harm being suffered by the residents is demonstrated in the papers and not put in issue by Eskom.

42. **Thirdly**, it is not in issue that for an extended period of time before the implementation of the NMD limitations that Eskom provided both municipalities with electricity in excess of the NMD.

43. In the case of Ngwathe, it is the case for Eskom that the damage to the infrastructure which it states will cost one hundred and twenty-seven thousand Rand to repair was caused by illegal connections that had been permitted by the municipality. There was no evidence of this before the court and given the relatively modest cost of effecting the repairs, howsoever the damage was caused, ought not to impede the restoration of the supply within a short period of time.

44. In the case of Lekwa, the infrastructure is intact and all that need be done is for Eskom to increase the supply.

45. The debt levels of the respective municipalities and the duration of the time that Eskom permitted them to exceed NMD, while imposing penalties for doing so

militates against the prejudice, if any, that Eskom may suffer. The applicants however are faced with prejudice that cannot be measured in monetary terms or even mitigated. The balance of convenience to my mind clearly favours the applicants.

46. **Fourthly,** Eskom argued that the applicants have a remedy in law to compel the municipality to provide them with the electricity they require. This argument ignores the fact that Eskom has a monopoly when it comes to the supply of bulk electricity and that there is no other supplier that the municipalities could approach. The situation is exacerbated by the municipal debt levels.

47. For so long as the NMD penalties and interest charges which Eskom levies on the municipalities exceed the cost of actual consumption, paying consumers will be saddled with hopelessly insolvent municipalities that have no prospect whatsoever, without outside intervention or assistance, of paying their outstanding debt to Eskom. The result is a catch 22 situation for the applicants and consumers in the municipalities and Eskom has become the proverbial cholesterol in the municipal service delivery breakdown in Ngwathe and Lekwa. They simply have no other recourse than to approach the court.

48. For the reasons given I intend to grant the orders that I do. The remaining issue to be considered is the costs of the applications. The applicants argued that a punitive order for cost should be granted against both the municipalities and Eskom, jointly and severally, the one paying the other to be absolved in each of the cases. It was argued that Eskom which has been before our courts on numerous occasions for similar conduct has persisted in a course of conduct which it knows is incorrect.

49. Eskom argued that the prior cases before the courts all dealt with a situation where the supply of electricity had been terminated and that in the instant matters they had not terminated the supply but simply acted in terms of the contracts between themselves and the municipalities. This it was argued distinguished the present matters and militated against a punitive award for costs. I am not persuaded that a punitive order for costs should not be granted in these matters. The legal position has been known to Eskom for some years having regard to the authorities I was referred to. Most telling however was Eskom's indifference to the consequences of the reduction in supply once it was brought to their attention – as set out in paragraphs 15 and 18 above.

50. On consideration of the matters as a whole, I am persuaded that a punitive order for costs is warranted and intend to exercise my discretion in the award of costs accordingly.

51. In the circumstances it is ordered:

In Case number 31813/20

51.1 The First Respondent, Eskom, is to increase, alternatively restore the maximum electricity load supply to Parys and Vredefort to the level supplied prior to Eskom's recent implementation of the current limited 95% of 21 MVA to Parys and 4.3 MVA to Vredefort;

thus interdicting and prohibiting Eskom from implementing its decision to limit electricity supply to Ngwathe per Parys and Vredefort

to the Notified Maximum Demand ("NMD") of 95% of 21 MVA in Parys and 4.3 MVA in Vredefort pending an agreement acceptable to Eskom on the settlement of arrears owed by the Second Respondent ("the decision");

51.2 The First and Second Respondents jointly and severally are ordered to, within 5 days of the order, alternatively a time period set by the Court, restore the bulk electricity supply equipment to enable both transformers at Parys to be available and to render sufficient capacity at Parys, alternatively to install infrastructure to permit and allow electricity supply to Parys to the levels experienced prior to recent limitation associated with the NMD of 21 MVA for Parys following upon implementation of the decision;

51.3 The First Respondent is directed to provide and assist the Second Respondent to enable ringfeed of supply to Parys, to serve as back-up and to serve as source in cases of emergency ensuring that adequate alternative capacity is available at the aforesaid towns.

51.4 The order in paragraphs 51.1 to 51.3 above will operate as an interim interdict pending:

51.4.1 the finalization of this application; and

51.4.2 the final adjudication of the Applicant's application for a review of the First Respondent's decision(s), in terms of the Promotion of Administrative Justice Act No 3 of 2000 ("PAJA") and/or legality review to set aside the First Respondent's decision(s) to implement the limit to the bulk electricity supply to the Second Respondent per Parys and Vredefort;

51.4.3 the relief in paragraphs 51.1 to 51.3 above will lapse if the Applicant fails to institute the aforesaid review application on or before 30 October 2020.

51.5 The First and Second Respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of this application which include the reserved costs of 6 August 2020 on the scale as between attorney and client, such costs to also include the costs consequent upon the employment of two counsel.

In Case number 35054/20

52.1 The First Respondent, Eskom, is to increase, alternatively restore the maximum electricity load supply to Lekwa Local Municipality ("Lekwa") per the towns of Standerton, Sakhile, Meyerville and surrounds to the level supplied prior to Eskom's implementation of the current limited 55 MVA, being at least 67MVA; thus interdicting and prohibiting Eskom from continuing with implementation of its decision to limit electricity supply to

Lekwa to the Notified Maximum Demand ("NMD") of 55 MVA ("the decision");

52.2 Interdicting the Second Respondent from implementing rotational load shedding permitted on a limitation linked to NMD of 55 MVA to Standerton, Sakhile, Meyerville and surrounds;

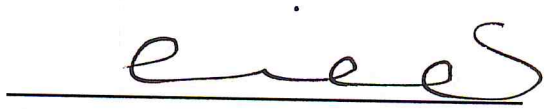
52.3 The order in paragraphs 52.1 to 52.2 above will operate as an interim interdict pending:

52.3.1 the finalization of this application; and

52.3.2 the final adjudication of the Applicant's application for a review of the First Respondent's decision(s), in terms of the Promotion of Administrative Justice Act No 3 of 2000 ("PAJA") and/or legality review to set aside the First Respondent's decision(s) to implement the limit to the bulk electricity supply to the Second Respondent to the level of the NMD set or agreed to as 55 MVA.

52.3.3 the relief in paragraphs 52.1 to 52.2 above will lapse if the Applicant fails to institute the aforesaid review application on or before 30 October 2020.

49.4 The First and Second Respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of this application which include the reserved costs of 21 August 2020 on the scale as between attorney and client, such costs to also include the costs consequent upon the employment of two counsel.



A MILLAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 25 AUGUST 2020

JUDGMENT DELIVERED ON: 28 AUGUST 2020

JUDGMENT DELIVERED ELECTRONICALLY BY EMAIL DELIVERY TO THE REPRESENTATIVES OF THE PARTIES – DEEMED TO HAVE BEEN HANDED DOWN AT 08H00 ON 28 AUGUST 2020

IN CASE NUMBER: 31813/20

COUNSEL FOR THE APPLICANT: ADV. DH WIJNBEEK

ADV. S SISEKO

INSTRUCTED BY:	LOU VAN WYK INC.
REFERENCE:	MR. L VAN WYK
COUNSEL FOR THE FIRST RESPONDENT:	ADV. M GWALA SC
	ADV. L RAKGWALE
INSTRUCTED BY:	MAPONYA INCORPORATED
REFERENCE:	MS. P LEDWABA

NO APPEARANCE FOR THE SECOND TO SIXTH RESPONDENTS

IN CASE NUMBER: 35054/20

COUNSEL FOR THE APPLICANT:	ADV. H VAN EEDEN SC
	ADV. DH WIJNBEEK
	ADV. K KABINDE
INSTRUCTED BY:	ANDREAS PEENS ATTORNEYS
REFERENCE:	MR. A PEENS
COUNSEL FOR THE FIRST RESPONDENT:	ADV. M GWALA SC
	ADV. L RAKGWALE
INSTRUCTED BY:	NGENO AND MTETO INCORPORATED
REFERENCE:	MR. JAFTA

NO APPEARANCE FOR THE SECOND TO SIXTH RESPONDENTS