

Judgment reserved in CoCT's bid to procure power from independent sources

Judgment has been reserved in the City of Cape Town's application to get clarity on whether municipalities are lawfully entitled to procure energy from independent power producers in terms of their own energy planning and not only in terms of national prescripts.



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Arguments in the matter concluded today during a virtual hearing of the North Gauteng High Court and judgment has been reserved for a time in the future. The Centre for Environmental Rights joined the matter as an *amicus curiae*, in support of the City.

The legal action came about to force clarity on how the City is to procure energy from independent power producers. The City had been asking for legal clarity for more than four years from the National Government. The current Electricity Regulation Act allows the Minister of Mineral Resources and Energy to prescribe the amount and type of new generation. The City contends it is its constitutional mandate to provide power to its customers, allowing those customers to choose the type of power they receive. It emphasises its plans and operations must be done in accordance with a nationally accepted framework and spirit of intergovernmental collaboration.

"We will now await judgment on this matter. The first prize is that we get the legal clarity required, via the court or the National Government. The City has asked the court for a declaratory order to the effect that it does not require a Section 34 determination, alternatively that Section 34 is unconstitutional, alternatively that the Minister should be compelled to make the determination called for by the City in terms of its energy planning. We are not only doing this for Cape Town but for all municipalities because local context and planning should also form part of the decision-making process. We thank all parties thus far for the very constructive arguments as over the years, the City had attempted to resolve the matter inter-governmentally, unfortunately to no avail. We are grateful for all progress made," said the City's Executive Mayor, Alderman Dan Plato.

The City hopes legal clarity will be given. It believes the Draft New Generation Capacity Regulations that were published last week unfortunately still fall short in addressing the needs of municipalities.

The Regulations allow a municipality to apply to the Minister of Mineral Resources and Energy for a determination in terms of Section 34 of the Electricity Regulation Act and require that this determination must be made in accordance with the national Integrated Resource Plan (IRP) for electricity.

However, contrary to this, the City's contestation is that it does not require a Section 34 determination (an application via the Minister and in accordance with the national IRP) but that it is free to generate and procure electricity in accordance with its statutory responsibilities to provide a secure electricity supply. The City is proactively developing a City Integrated Resource Plan, engaging National Treasury on, among others, how to set up a future City Independent Power Purchase office and also looking into the options for self-build.

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