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BALANCING ENERGY DEMANDS AND ENVIRONMENTAL GOALS

Breaking down the rigid dichotomy between South Africa's constitutional environmental right and its energy landscape. By ALECIA PIENAAR, counsel – Corporate & Commercial at Cliffe Dekker Hofmeyr

With its entrenched dependence on fossil fuels for electricity generation, the South African energy transition narrative has long been dominated by the difficulty of balancing energy security, socioeconomic priorities and environmental protection. Even the draft Integrated Resource Plan released for comment in January 2024 failed to identify a new electricity generation pathway that would allow the country to serve its energy demands while meeting its decarbonisation targets committed to under the Paris Agreement.

However, recent developments seem to suggest that the balance is shifting with the introduction of more pragmatic solutions that could potentially break down the rigid dichotomy that has always existed between transitioning the country's energy landscape and realising the constitutional right to an environment that is not harmful to people's health or wellbeing.

More specifically, on 31 March 2025, the Minister of Forestry, Fisheries and the Environment granted eight coal-fired power stations limited exemptions from complying with the Minimum Emission Standards (MES) prescribed under the National Environment Management: Air Quality Act 39 of 2004 (NEMAQA). The MES are prescribed under NEMAQA for identified activities resulting in the emission of harmful substances that have a detrimental effect on the environment, including for combustion installations used for electricity generation.

While various timeframes for compliance are imposed under the legislation, several applications by different coal power stations for postponement for compliance with such timeframes have been made and granted in the past.

THE PATH TO A JUST ENERGY TRANSITION

However, acknowledging his mandate "to drive emissions reductions and ensure a just transition to a low-carbon economy", the minister made the most recent postponement decision subject to several "rigorous" conditions, including:

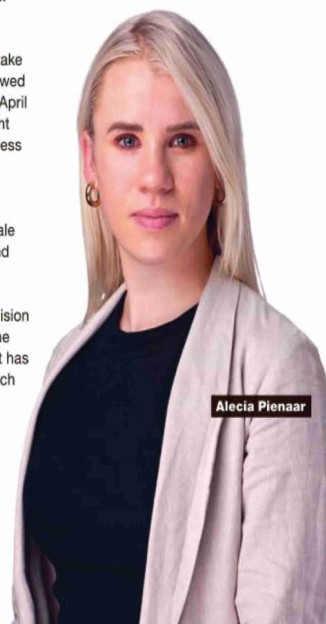
- Strict mitigation measures to limit environmental impacts.
- Health and socioeconomic interventions to better support impacted communities.
- Enhanced transparency through the release of real-time emission data.
- Acceleration of renewable energy uptake by Eskom – which condition was followed by Eskom's release of a tender on 14 April 2025 for the accelerated establishment of a separate renewable energy business through private-public partnerships.

The minister also encouraged several transitional steps to be taken by Eskom, including the establishment of a wholesale energy market and the establishment and implementation of the Independent System Operator.

Worth noting is that the minister's decision came two weeks before a decision by the Supreme Court of Appeal (SCA) in what has been coined the "Deadly Air Case", which

centres around the minister's obligation to develop and implement specific regulatory measures to improve air quality in the severely polluted Highveld priority area – home to many of the coal-fired power stations subject to the MES exemption decision. In dismissing the minister's appeal, the SCA was critical of the previous minister's "dragging of feet" and, in adopting a purposive, human rights-based approach, held that "in the face of ongoing high levels of air pollution, the minister was dutybound to act".

"While the granting of further MES timeframe compliance exemptions" is by no means something to be welcomed, the imposition of practical conditions that speak more directly to socioeconomic and energy market needs while realising environmental protection is a welcome approach that stands in stark contrast to both the postponements granted in the past and the inaction that characterised the Deadly Air Case. It is a more integrated solution that will hopefully break through the "either/or" approach to better balance energy sector demands and environmental goals. ●



Alecia Pienaar

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THE IMPOSITION OF PRACTICAL CONDITIONS THAT SPEAK MORE DIRECTLY TO SOCIOECONOMIC AND ENERGY MARKET NEEDS WHILE REALISING ENVIRONMENTAL PROTECTION IS A WELCOME APPROACH.