



**African Climate
Reality Project**

**NERSA hearings on Eskom
revenue application -
November 2017**

Johan van den Berg – Board Member ACDP

African Climate Reality Project (ACRP)

- The African Chapter of **The Climate Reality Project**
- Former US Vice President, Al Gore's Non-Profit Organisation
- Is hosted in Africa by Food & Trees for Africa.
- Gore has trained close to 600 African Climate Leaders in Africa, from government, NGOs, youth, media and scientists across the continent.
- ACRP's aim is to spread awareness, action and mobilise communities from Algeria to Zimbabwe to find solutions to climate change.
- Through the work of Climate Leaders across the continent, the movement urges people to take climate action now and communicates the urgent need for countries to act on their commitments under the Paris Agreement on Climate Change.

Take climate ACTION now.



**African Climate
Reality Project**

Visit www.climatereality.co.za



www.ftrees.co.za

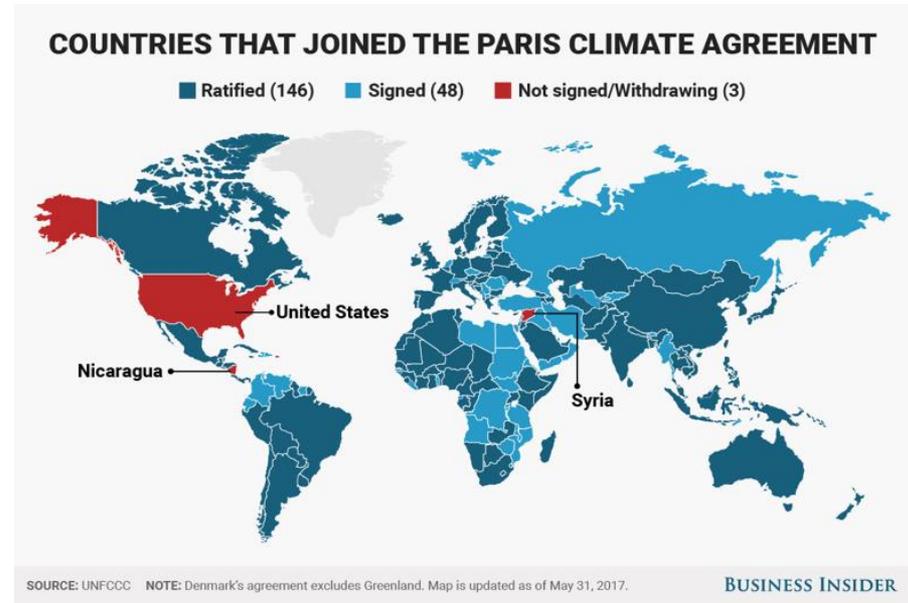
In summary

- Full submission at www.climatereality.co.za
- The Paris Agreement and NERSA's role in ensuring a liveable and fixable planet
- What is the legal framework guiding the electricity sector in SA? - Conventional understanding and the Eskom interpretation
- The SAWEA complaint – uncertainty and what has already been lost – Eskom claiming refunds for contracts it is refusing to sign and that cannot close in this financial period
- The REIPPPP and the Eskom new-build – where do we curtail morally and financially?
- Only one solution that is legally robust: Postpone revenue application until the legal uncertainty is removed



The Paris Agreement

- After 27 years, the international agreement on climate change that regulates the safeguarding the planet for future generations
- Signed by “all” and ratified by 146 countries already, including South Africa. This means it is binding on SA also domestically and will guide energy policy like the constitution guides us generally
- Based on complete decarbonisation after 2050 and a future based on renewable energy



NERSA's role in providing a liveable planet

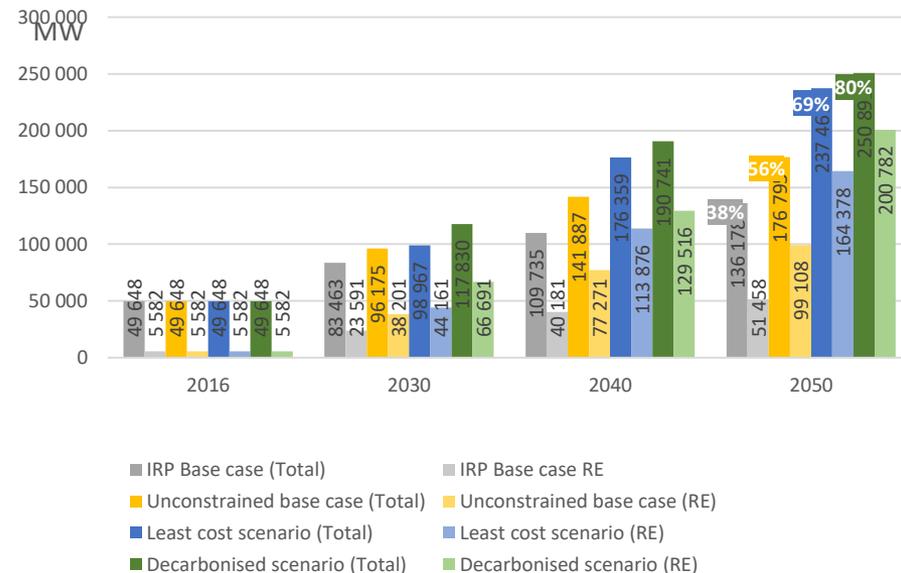
- The Paris Agreement relies on enforcement agencies for its life and well-being
- In South Africa, this is NERSA. In other countries it is other regulators and agencies. Collectively these are the custodians of the Paris Agreements.
- To build a thriving renewable energy industry by 2050 in SA (about 55 GW installed as a minimum), renewable energy industry should be nurtured and legally protected
- 2050 is one investment cycle away



The required size of the RE sector in 2050

- By 2050, by all credible and reasonable, recent modelling scenarios, SA will have an RE industry of between 55,250 MW (DOE IRP 2016 base case) and 200,782 GW (CSIR decarbonized scenario). Larger than Eskom is now.
- We must protect the country's renewable energy investors and workers to ensure they build this very large infrastructure sector by 2050

The upper and lower bounds of South Africa's future RE electricity installed



Eskom's attack on renewable energy

- In the past two years, Eskom has essentially shut down its renewable division, cancelled plans for its solar PV plant, broken its Medupi loan terms with the World Bank and refused to sign further agreements with REIPPPP counterparts.
- This is despite over-recovering some ZAR 7 billion from consumers on REIPPPP projects
- The REIPPPP has kept Eskom from insolvency as we stand here today
- Its attack has caused 58 billion of investment not to occur, 5 of 12 new green industry firms close, 190 jobs to be lost, 600 being forfeited and a further 620 being in jeopardy. A total of ZAR 2.84 billion in investment has been suspended and more than ZAR 1 billion invested in the renewables manufacturing sector has been lost - or is at risk.



What is the regulatory framework we are governed by?

Conventional understanding	Eskom's implicit understanding (and the de facto status quo)
<p>NERSA is the custodian of a regulated industry and takes decisions to protect the rate payer</p>	<p>Eskom is the ultimate custodian of the industry and does only what it wants to.</p>
<p>Eskom is regulated by NERSA and obeys its directives. NERSA decides on "value for money" and generation licences for IPPs</p>	<p>Eskom is not regulated by NERSA nor government but has a veto right over what happens in the electricity industry. Eskom decides on value for money and can veto generation licences</p>
<p>Eskom carries out government policy and abides by legal requirements including SA's international agreements to the international community</p>	<p>Eskom need not carry out government policy nor consider South Africa's international obligations (fiduciary obligations under company law and under the Public Finance Management Act trump all the legal imperatives mentioned above).</p>
<p>Eskom recovers its REIPPPP expenditure from the consumer and ends in a zero position financially (after RCA adjustments)</p>	<p>All money paid to REIPPPP is an Eskom "loss" that at least partially explains Eskom's poor financial position</p>



SAWEA's complaint

- In October 2016, the South African Wind Energy Association instituted a complaint against Eskom at NERSA for its refusal to sign REIPPPP Rounds 4 and further.
- Eskom is disputing the complaint, essentially placing all the legal questions above in question.
- In summary, they dispute they are obliged to sign the agreements
- At the same time, Eskom's revenue application claims compensation through tariff increases for all projects in Rounds 3.5 and further – the very projects that Eskom is disputing it is obliged to sign



Revenue application, page 68

IPPs (local)	Energy (GWh)			Cost (R million)		
	2016/17	2017/18	2018/19	2016/17	2017/18	2018/19
Eskom short term programmes	4 235	424	424	3 952	274	302
MTPPP	29	0	-	37		-
STPPP (incl Munic)	4 101	0	-	3 845		-
WEPS	105	424	424	70	274	302
Section 34 programmes (-RE)	67	122	176	2 186	2 377	2 485
DoE Peaking	67	88	88	2 186	2 338	2 380
Co-generation	-	34	88	-	39	105
Renewable IPP	7 227	11 661	17 828	15 582	21 631	31 230
Renewable IPPs Round 1	3 593	3 845	3 834	8 958	10 276	10 850
Renewable IPPs Round 2	2 671	3 072	3 074	5 430	5 917	6 191
Renewable IPPs Round 3	963	3 073	4 493	1 194	3 943	6 452
Renewable IPPs Round 3.5	-	-	590	-	-	2 308
Renewable IPPs Round 4	-	501	2 931	-	449	2 514
Renewable IPPs Round 4.5	-	1 091	2 721	-	939	2 629
Small-scale renewable	-	79	185	-	107	286
Total IPP	11 529	12 207	18 428	21 720	24 282	34 017
Network costs (UoS)					168	192
Total IPP	11 529	12 207	18 428	21 720	24 450	34 209



SAWEA's complaint (2)

- Eskom is simultaneously holding two opposing, conflicting and mutually destructive legal opinions
- NERSA cannot decide on the revenue application before deciding whether Eskom is legally obliged to sign
- The one flows from the other – therefore the revenue application should be postponed until NERSA has ruled on the SAWEA complaint
- It cannot be otherwise and allowing revenue for contracts that Eskom is disputing would render the NERSA decision open to attack in the courts.



The detail of our submission

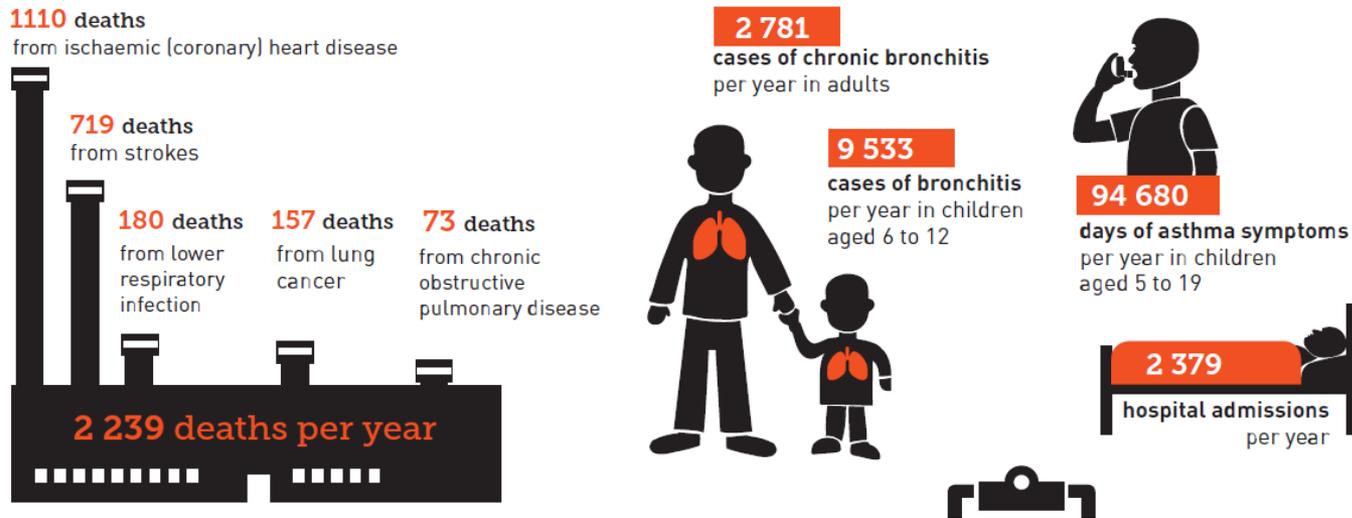
- Our submission sets out the legal position of the regulatory framework in the electricity sector as per the Appellate Division judgment in the Borbet case. We agree with it as sound law.
- It refers in some detail to the legal opinion by Unterhalter SC and Sisalana on Eskom's refusal to sign. We agree with that too.
- It contains more detailed reasoning for the points made herein.
- It points out that the recent "77c" decision by the former Minister of Energy is of no legal force nor effect (and irrelevant) and gives the reasoning for such conclusion
- It devotes time to the issue of human health, jobs and the impacts of the decisions NERSA will make.



Where do we curtail our newbuild?

- Medupi and Kusile will lead to fatalities and health problems, cost about three times more than wind and solar PV and lead to excessive greenhouse gas emissions

Air pollution from Eskom's coal-fired power stations cause:



CSIR research on a RE rich future

- The RE future is up to ZAR 90 billion per annum cheaper
- It creates more jobs
- It uses less water
- It is aligned with the Paris Agreement and where the rest of the world is going



Thank you



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