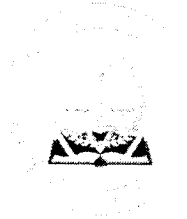


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case number: 24364/2016

Date: 17 November 2016

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
17/11/2016	
DATE	SIGNATURE

In the matter between:

THE NATIONAL ENERGY REGULATOR OF
SOUTH AFRICA

FIRST APPLICANT

ESKOM HOLDINGS SOC LTD

SECOND APPLICANT

And

BORBET SA (PTY) LTD

FIRST RESPONDENT

PG GROUP (PTY) LTD

SECOND RESPONDENT

CROWN CHICKENS (PTY) LTD

THIRD RESPONDENT

AGNI STEELS SA (PTY) LTD

FOURTH RESPONDENT

AUTOCAST SOUTH AFRICA (PTY) LTD t/a
AUTOCAST PORT ELIZABETH

FIFTH RESPONDENT

NELSON MANDELA BAY BUSINESS CHAMBER

SIXTH RESPONDENT

**JUDGMENT
(LEAVE TO APPEAL)**

PRETORIUS J.

(1) I have considered the heads of argument of both the first and second applicants, as well as the notice of application for leave to appeal.

(2) It is so that the respondents indicated that:

“Although the Applicants are not in agreement that either NERSA or Eskom has any prospects of success on Appeal, we are instructed that the Applicants shall abide the decision of the Court in relation to the Application for Leave to Appeal. The Applicants do so in order to expedite the matter and in an attempt to ensure that a final authoritative Judgment is handed down promptly.

...

Please note that, by doing so, the Applicants are not making any concession or admission that NERSA or Eskom is entitled to any relief, and the Applicants' rights are fully reserved.”¹

- (3) Although the respondents are abiding the decision of the court in this application, it does not mean that leave to appeal should be granted automatically. The court still has to consider the provisions of section 17(1)(a)(i) and (ii) of the **Superior Courts Act**².
- (4) In terms of section 17(1)(a)(i) of the **Superior Courts Act**³ leave to appeal would be granted if the appeal “*would have a reasonable prospect of success*” or in terms of section 17(1)(a)(ii) “*there is some other compelling reason why the appeal should be heard*”.
- (5) In the present instance the interpretation of the MYPD3 methodology is of prime importance. I find that it is possible that another court may interpret the provisions of the application of the MYPD3 methodology in a different manner.
- (6) At the outset, when the application was heard, it was common cause that the issues that were argued and the findings by the court would have huge consequences, not only to the consumers of electricity, but also to the South African economy and the two applicants.

¹ Letter dated 1 November 2016

² Act 10 of 2013

³ *Supra*

(7) I therefore make the following order:

1. Leave to appeal against the whole of the judgment and order in the abovementioned case number handed down on 16 August 2016 is granted to the Supreme Court of Appeal.
2. The costs of this application are to be costs in the appeal.



Judge C Pretorius

Case number	: 24364/2016
Matter heard on	: 17/11/2016
For the First Applicant	: Adv DM Fine SC Adv A Pantazis
Instructed by	: Hogan Levells (SA) Inc
For the Second Applicant	: Adv JJ Gauntlett SC Adv SM Lebala SC Adv EM Baloyi-Mere
Instructed by	: Ledwaba Mazwai Attorneys
For the Respondents	: Adv DN Unterhalter SC Adv M Du Plessis Adv J Mitchell Adv ALS Msimang
Instructed by	: Couzyn Hertzog & Horak
Date of Judgment	: 17 November 2016