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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.

SIGNATURE DATE: **5 October 2021**

Case No: 29841 / 2019

In the matter between:

SIEMENS (PTY) LTD Applicant

and

ESKOM HOLDINGS (SOC) LTD First Respondent

SENTA SQUARE (PTY) LTD Second Respondent

JUDGMENT ON REMEDY

WILSON AJ:

1 On 16 August 2021, I declared unlawful a decision taken by the first respondent ("Eskom") to disqualify the applicant ("Siemens") from a tender bidding process for maintenance work at Camden Power Station, and to award the work to the second respondent ("Senta Square"). Because it was not clear to me what the practical effect of the declaration would be on

Eskom's capacity to generate power, I suspended that order pending further submissions on the just and equitable remedy to follow on the declaration of unlawfulness.

2 The parties subsequently came to an agreement on the remedy to be granted, and I intend to make an order substantially in terms of the agreement reached. It was accordingly not necessary to convene a further hearing on remedy, which I had originally set down for 13 September 2021.

3 I should record, however, that the agreement reached reflects the uncontested fact that to set the tender awarded to Senta Square aside at this stage may well debilitate Camden Power Station's generation capacity, and result in significant load-shedding. Unlawful though the award of the tender to Senta Square was, the parties have – quite properly – agreed that the public interest in continued power generation at Camden Power Station outweighs the need to grant immediately effective relief for the unlawfulness of Eskom's conduct.

4 The effect of the relief agreed between the parties, and which I shall grant, is that the declaration of unlawfulness will remain suspended until Senta Square's contract runs its course. That contract will not be renewed, and a new tender process will be run to determine how the maintenance services originally put out to tender will be provided after the end of the contract. If, and only if, there are truly exigent and unforeseen circumstances that necessitate further suspending the declaration of unlawfulness, Eskom may apply for such an extension in advance, and that extension may be granted on good cause shown.

5 The agreed relief leaves the costs order I granted on 16 August 2021 intact, but provides for each party to pay its own costs between then and now.

6 For all these reasons, I make the following order –

1. Paragraph 1 of the order handed down on 16 August 2021 declaring the award of the contract for the provision of control and instrumentation maintenance services at Camden Power Station ("the services") to the second respondent to be unlawful, is suspended until 1 March 2022.

2. Subject to paragraph 3 below, the second respondent is directed to cease rendering the services at Camden Power Station on 28 February 2022.

3. In the event that unforeseen circumstances beyond the reasonable control of the first respondent cause a delay in the tender process for the award of a new contract to provide the services, and provided that the first respondent shall first obtain the prior approval of this court on good cause shown through written submissions furnished to the court and copied to the applicant, not later than 18 February 2022, the second respondent may continue to render the services on and after 1 March 2022, pending the appointment of the new service provider, if the court so directs.

4. Each party shall pay its own costs arising between 17 August 2021 and 5 October 2021.

S D J WILSON
Acting Judge of the High Court

This judgment was prepared and authored by Acting Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 5 October 2021.

DECIDED ON: 5 October 2021

For the Applicant: J Wasserman SC
Instructed by Pinsent Masons Inc

For the Respondent: T Govender
Instructed by FY Renqe Inc