THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 516/2025

In the matter between:

MINISTER OF ELECTRICITY AND ENERGY	**APPELLANT**

and

AFRICAN CLIMATE ALLIANCE	**FIRST RESPONDENT**
VUKANI ENVIRONMENTAL JUSTICE MOVEMENT IN ACTION	**SECOND RESPONDENT**
THE TRUSTEES FOR THE TIME BEING OF GROUNDWORK TRUST	**THIRD RESPONDENT**
MINISTER OF MINERAL RESOURCES	**FOURTH RESPONDENT**
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	**FIFTH RESPONDENT**
MINISTER OF FORESTRY, FISHERIES & THE ENVIRONMENT	**SIXTH RESPONDENT**
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	**SEVENTH RESPONDENT**
CENTRE FOR CHILD LAW	***AMICUS CURIAE***

Neutral citation: *Minister of Electricity and Energy v African Climate Alliance and Others* (516/2025) [2026] ZASCA 146 (30 October 2026)

Coram: SCHIPPERS, MBATHA and COPPIN JJA and MPHAHLELE and MOOKI AJJA

Heard: 19 August 2026

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Summary: Constitutional Law – decisions challenged – procurement by Minister of 1500 megawatts of coal-fired power under Electricity Regulation Act 4 of 2006 – concurrence by National Energy Regulator – publication of Integrated Resource Plan 2019 (IRP 2019) – infringement of s 24 and best interests of child standard in s 28(2) of the Constitution – IRP 2019 superseded by IRP 2025 – which makes no provision for coal-fired power – s 16(2) of Superior Courts Act 10 of 2013 – whether decision on appeal has a practical effect or result.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Van der Westhuizen J, sitting as court of first instance):

1 The appeal is dismissed under s 16(2)*(a)*(i) of the Superior Courts Act.

2 The appellant shall pay the costs of appeal of the first, second and third respondents, including the costs of two counsel.

JUDGMENT

Schippers JA (Mbatha and Coppin JJA and Mphahlele and Mooki AJJA concurring)

Introduction

[1] On 25 September 2020, the appellant, the Minister of Electricity and Energy (the Minister), published a notice in the Government Gazette in terms of s 34(1) of the Electricity Regulation Act 4 of 2006 (ERA), in which he determined that new generation capacity was necessary for the energy security of the country, which included 1 500 megawatts (MW) to be generated from coal (the Minister's determination), amongst other energy sources.[1] That determination was made in consultation with the National Energy Regulator of South Africa (NERSA), as required by the ERA. The Minister also published the Integrated Resource Plan on 18 October 2019 (IRP 2019).[2]

[1] The Minister's determination was published under GN 1015, *GG* 43734, 25 September 2020.
[2] Published under GN 1360, *GG* 42784, 18 October 2019.

[2] In 2023 the first, second and third respondents (the respondents) launched an application in the Gauteng Division of the High Court, Pretoria (High Court), for an order declaring the Minister's determination, NERSA's concurrence in that determination, and IRP 2019 (the impugned decisions), inconsistent with the Constitution and invalid, to the extent that those decisions included 1 500 MW of coal-fired power as an energy source.

[3] The High Court (Van der Westhuizen J) granted the relief sought, with costs. It upheld the constitutional challenge to the impugned decisions, solely on the basis that they 'impact negatively on the rights of children under sections 24 and 28 of the Constitution in the absence of cogent facts to the contrary'. The court concluded that the rule 53 record and evidence by the Minister and NERSA 'is ominously silent on any considerations given to the effect that the additional 1 500 MW new coal-fired power will have on the environment and the health of the nation, in particular that of children'. The court went on to find that the Minister and NERSA failed to justify the limitation of those rights under s 36 of the Constitution. Nothing in the judgment indicates how the High Court arrived at these conclusions. Consequently, the impugned decisions were reviewed and set aside to the extent that they provide for 1 500 MW of coal-fired electricity generation.

[4] The appeal is with the leave of the High Court. NERSA did not participate in the appeal. The Centre for Child Law, which was admitted to the proceedings as an *amicus curiae*, presented written and oral submissions on appeal.

[5] The respondents, in their heads of argument, rightly conclude that the Government's plans for new coal-fired power stations are now history. On 28 October 2025 the Minister published the Integrated Resource Plan 2025

(IRP 2025) which makes no provision for coal-fired power.[3] Thus, IRP 2025 is not merely a draft awaiting approval. It has been formally published in the Government Gazette and is being implemented.[4] Given these developments, the parties were asked to file submissions as to whether the appeal has been rendered moot.

[6] On 7 October 2026 the Minister announced the proposed approach to the first determination under the plan, involving 4 600 MW of battery energy storage and 5 000 MW of gas-to-power capacity. This is evidence of active implementation, which is consistent with IRP 2025 and can be implemented under the current statutory framework.

[7] The Minister contends that the appeal has not been rendered moot, in sum, for the following reasons. The true issue is whether a plan or policy devised by Government, which has not yet been implemented, is reviewable. The High Court erred in interfering with a plan or policy of the Government, which violates the doctrine of separation of powers and 'set a dangerous precedent'. The Minister's determination in relation to the other sources of energy contained therein, still stands until it is set aside. Therefore, a decision on the issue will still have a practical effect or result because the Minister may deviate from an integrated resource plan in an emergency or if it is necessary to do so in the national interest.

[8] The respondents submit that the Minister's determination has not been rendered moot by the IRP 2025, essentially for two reasons. First, the Minister's determination, which includes 1 500 MW of new coal-fired power as an energy source, has not been withdrawn and has continuing legal effect. Second, while IRP 2019 has now been replaced by IRP 2025, rendering it practically moot, it remains in the interests of justice to decide the validity of the inclusion of

[3] Integrated Resource Plan 2025 was published under GN 6767, *GG* 53596, 28 October 2025.
[4] *Ibid*.

1 500 MW of new coal-fired power, because this raises discrete legal questions of wider public importance.

Will a decision have a practical effect or result?

[9] The central issue on this appeal is whether a decision will produce a practical result. Section 16(2)*(a)* of the Superior Courts Act 10 of 2013 (the Superior Courts Act) provides:

'(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

(ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.'

[10] The Minister's determination states that new generation capacity must be procured from the following energy sources: (a) 6 800 MW from renewable energy sources (Photovoltaic (PV) and wind. Solar panels contain PV cells that convert sunlight directly into electrical energy.); (b) 513 MW from storage; (c) 3 000 MW from gas; and (d) 1 500 MW from coal. The respondents' challenge to the impugned decisions was confined to the inclusion of 1 500 MW of electricity to be generated from coal (the 2020 coal determination) by constructing power stations, which they contended would result in harmful carbon emissions that would have adverse effects on the environment and contribute to climate change.

[11] Accordingly, the Minister's defence of the impugned decisions was limited to the 2020 coal determination. In summary, and for present purposes, it is this:

(a) Since 1998 Parliament has enacted six statutes to give effect to the environmental rights and its constitutional duty envisaged in s 24 of the Constitution, including the National Environment Management Act 107 of 1998 (NEMA) and the National Environment Management: Air Quality Act 39 of 2004 (Air Quality Act). The NEMA provides a general

framework to ensure environmental compliance by all developments across all spheres of government. Any development, including the construction of power plants that have any impact on the environment, must comply with the requirements of the NEMA. The objects of the Air Quality Act include taking reasonable measures for the prevention of pollution and ecological degradation; securing ecologically sustainable development; and providing national norms and standards to regulate air quality monitoring, management and control by all spheres of government. This Act also requires all Eskom's coal-fired and liquid fuel-fired power stations to meet the Minimum Emissions Standards Regulations published under the Act.

(b) The procurement process for the construction of power stations contemplated in s 34(1)*(e)* of the ERA has not commenced: their location has not been determined; the types of technologies that may be deployed have not been specified; and the costs thereof were not determined. Consequently, the decisions were not ripe for review.

(c) The respondents' challenge to the impugned decisions was impermissibly abstract and could not be determined outside a factual matrix to ground a constitutional complaint.

(d) IRP 2019 is not reviewable. It is untenable to declare the inclusion of new coal-fired power generation in IRP 2019 unconstitutional, when the use of coal for that purpose remains lawful in the Republic, and coal continues to account for the bulk of the country's electricity generation. The respondents' challenge should have been directed at the constitutional permissibility of coal-fired electricity generation.

(e) South Africa has complied with the nationally determined contributions it has undertaken pursuant to the Paris Agreement on Climate Change, to which it is a party.

[12] NERSA's defence to the impugned decisions in the High Court, included the following:

(a) The NEMA gives effect to the rights invoked by the respondents. They should have challenged the constitutionality of NEMA or relied upon its provisions to establish their case. They could not rely directly on the provisions of the Constitution.

(b) NERSA is satisfied that the Minister's determination 'is in line with South Africa's CO_2 emissions constraints, based on its commitments to reduce emissions in terms of the Paris Agreement'.

[13] The High Court failed to consider, let alone determine, the defences raised by the Minister and NERSA. If this Court now decides them, it would effectively be undertaking a first-instance adjudication of substantial constitutional and administrative law questions. As a rule, our courts have declined to decide on appeal, issues not determined by the court of first instance.[5] This applies in the present case for three reasons. First, this Court is deprived of the benefit of the High Court's analysis and conclusions on issues which may be dispositive of the appeal. This is inimical to the proper discharge of the appellate function. Second, there is no sufficient public-interest justification to determine the appeal, despite its mootness. And third, if the 1 500 MW of new coal-fired power is not part of IRP 2025, the Court would be deciding an appeal in the context of a historical allocation, without resolving any presently operative dispute about future generation capacity that entails coal as a source of energy. I revert to these aspects below.

[14] The inquiry under s 16(2)*(a)*(i) of the Superior Courts Act is whether the order sought would have a practical consequence for the parties or others. The absence of a live controversy does not, however, invariably preclude appellate

[5] *Premier, Gauteng and Others v Democratic Alliance and Others* [2021] ZACC 34; 2021 (12) BCLR 1406 (CC); 2022 (1) SA 16 (CC) paras 217-219.

adjudication. An appellate court retains a discretion to determine an otherwise moot appeal where the interests of justice so require. In exercising that discretion, the Court must consider, among other things, the nature and extent of any practical effect the order may have, the importance and complexity of the issues, the fullness of the argument advanced and the public interest in their determination. The Court must also guard against deciding abstract or academic questions where their resolution would serve no useful purpose.[6]

[15] Applied to the present case, the Minister's contention that the appeal is not moot, because the true issue for determination is whether a policy devised by Government is reviewable, is unsound. It does not address the practical effect of a decision on appeal. In any event, the general principle of reviewability of public power has been settled in *Pharmaceutical Manufacturers Association*.[7] There, the Constitutional Court established that the exercise of public power is subject to constitutional control, including the requirement of legality and objective rationality, even where the decision does not constitute administrative action. The respondents' challenge to the determination was whether the Minister's power under s 34 of the ERA to determine new generation capacity, was lawfully exercised in terms of the principle of legality and the Promotion of Administrative Justice Act 3 of 2000.

[16] The Minister submits that a decision on appeal will have a practical result in relation to the 2020 coal determination, since he may deviate from an IRP in an emergency or if he considers it necessary to do so in the national interest. The respondents submit that the IRP 2025 has not rendered the appeal moot, because the Minister's determination has continuing legal effect, 'by reserving a

[6] *Independent Electoral Commission v Langeberg Municipality* [2001] ZACC 23; 2001 (3) SA 925 (CC); 2001 (9) BCLR 883 (CC) para 11.
[7] *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others* [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC).

1 500 MW portion of the energy mix for new coal'. These submissions are however incorrect, for the reasons stated below.

[17] The question is not simply whether the 2020 coal determination remains in existence. Rather, it is whether that determination, which expressly linked the 1 500 MW of new coal-fired power to IRP 2019, can lawfully be implemented under IRP 2025, which has replaced IRP 2019 as the operative national electricity plan. IRP 2025 does not provide for the 1 500 MW of additional coal-fired capacity.

[18] The starting point is to identify what the Minister's determination authorised concerning coal-fired electricity generation, and the conditions governing its implementation. That determination, made under s 34(1) of the ERA prior to its amendment in 2025, provided for 1 500 MW of new coal-fired generation and expressly linked that capacity to the allocation for coal in Table 5 of IRP 2019 for 2023-2027. The requirements for its procurement included the following. The electricity had to be purchased from independent power producers and sold to the designated buyer (Eskom), in accordance with power purchase agreements and other project contracts. The aim was to connect the new coal-fired power to the national grid in line with the IRP 2019 timetable.

[19] Thus, the Minister's determination created a legal basis for the specified procurement, subject to its terms and the applicable law. The next question is whether that basis is sufficient under the ERA as amended, and IRP 2025.

[20] There is no transitional provision in either the ERA or IRP 2025 that preserves the continued validity of the 2020 coal determination; or that allows for its implementation under the current statutory framework. The relevant amendments to s 34, which came into effect on 1 January 2025, are the following:

(a) Section 34(1) provides that the Minister may make a determination in the event of market failure or an emergency, or for the purpose of ensuring the security of energy supply in the national interest, after consultation with NERSA and the Minister of Finance.

(b) Section 34(2) prescribes matters which a determination concerning new generation capacity must address. These include the capacity required; the permitted energy sources or technologies; the identity or status of generators; purchasing arrangements; and where applicable, procurement.

(c) Section 34(6)(a) states that the Minister, in making a determination, must have regard to the IRP. Section 34(6)(b) then expressly authorises deviation from that plan only in an emergency, or where necessary in the national interest.

(d) Section 34(7) requires prior publication of a notice inviting public comment on a proposed deviation, while s 34(8) permits departure from that requirement only if it is reasonable and justifiable in the circumstances.

(e) Section 34(9) expressly provides for powers necessary or incidental to give effect to a determination, including conducting procurement processes and entering into the relevant contracts, subject to the applicable statutory constraints.

[21] These provisions of the ERA do not empower the Minister to implement the 2020 coal determination. Section 34(6) is not a free-standing power to disregard IRP 2025.[8] It permits deviation in an emergency where necessary in the national interest, but it applies in the statutory context of *making a determination*.

[8] Section 34(6) provides:
'(6) In making a determination in terms of this section, the Minister-
(a) must have regard to the content of the integrated resource plan and the transmission development plan, as the case may be; and
(b) may deviate from the integrated resource plan or transmission development plan in an emergency or if it is necessary to do so in the national interest.'

The Minister cannot rely on s 34(8) as if it dispenses with the substantive conditions for deviation under s 34(6).

[22] This interpretation is consistent with the meaning of an IRP. Under the ERA as amended, an IRP is defined as:

'a forward-looking, indicative plan for electricity generation reflecting national policy on electricity planning, energy sources and generation capacities that reflects national policy on electricity planning and specifies the energy sources and technologies from which electricity may be generated, together with the amounts allocated to each.'

[23] IRP 2025 is exhaustive of the types of energy sources and technologies from which electricity may be generated; and indicates the amount attributable to each. Section 34(6)-(8) of the ERA expressly regulates deviations from the IRP – the clearest indication that any departure from the operative plan requires statutory justification. In other words, s 34(6)-(8) gives legal effect to IRP 2025.

[24] Parliament has expressly stated in what circumstances the Minister may deviate from the operative plan and has prescribed the procedural requirements for that deviation. Consequently, the submission that the 2020 coal determination can still be implemented in an emergency or in the national interest, or that it has continuing legal effect, is unsustainable in the absence of any savings provision in the ERA or IRP 2025, and in the light of the current statutory framework.

[25] It follows that if the Minister wishes to pursue the same 1 500 MW of coal-fired electricity generation, he cannot simply rely on the 2020 coal determination to bypass the current framework. A new determination under s 34 of the ERA would be required for that purpose, and any deviation from IRP 2025 would have to comply with the requirements of s 34(6)-(8).

[26] What is clear is that IRP 2025 has superseded IRP 2019. On the evidence, this renders any decision on the constitutionality or otherwise of IRP 2019 of no practical effect, firstly because setting aside the High Court's order will not alter any existing legal position. There has been no procurement process for the 1 500 MW of coal-fired generation, no contracts have been concluded, and Eskom has acquired no rights under the 2020 coal determination through such a process. Secondly, the original implementation timetable cannot be realised. The determination required procurement of 1 500 MW of coal-generated power for connection to the national grid as soon as reasonably possible, in accordance with the timetable in IRP 2019, which contemplated commencement of connections during 2023–2027.

[27] Thirdly, a decision on the constitutionality of IRP 2019 would be academic. The order sought on appeal would not restore IRP 2019 as the operative national electricity plan. The undisputed evidence is that IRP 2019 was the starting point for the Minister's determination and was used 'as a pathway to determine what electricity capacity is needed and the energy sources from which the electricity would be generated'. That determination was not an independent decision to procure coal regardless of future electricity policy. It specified 1 500 MW of new coal-fired generation by reference to the capacity allocated in IRP 2019 and prescribed an implementation process linked to that plan. IRP 2025 has superseded that plan and makes no provision for 1 500 MW of coal-fired capacity. Neither would setting aside the High Court's order restore the original implementation timetable, nor can the 2020 coal determination lawfully be implemented under the current statutory framework.

[28] In these circumstances, setting aside the High Court's order would remove the declaration of invalidity, but would not enable the proposed procurement to proceed lawfully. The Minister would still have to comply with the statutory

requirements for any further determination or other lawful authority required to procure additional coal-fired capacity.

[29] Consequently, the removal of the declaration of invalidity would not, on the material before the Court, establish a presently available lawful basis for procuring the additional 1 500 MW of coal-fired capacity. Any further determination or procurement would remain subject to the statutory requirements applicable to it. This conclusion does not depend on the proposition that every decision taken under a superseded IRP automatically ceases to have legal effect. It depends on the narrower proposition that the parties have not demonstrated how the determination under challenge could lawfully be implemented under the current statutory framework.

[30] Neither have the parties identified any material consequence that a successful appeal would produce for them or others. They have not demonstrated that the appeal would restore a presently exercisable power, remove a legal impediment to the 2020 coal determination, materially alter any existing legal right or obligation, or determine a question that would govern an identified subsequent decision. The possibility that a judgment might influence future decisions or litigation is relevant to the discretion of this Court to determine a moot appeal, but does not, without an identifiable practical consequence, establish that the order sought would have a practical effect or result.

[31] In the circumstances, the parties have not established what lawful action the Minister or NERSA would be enabled to take, or what material change in the legal position of any affected person would follow, if the appeal succeeded. The appeal would accordingly determine the validity of decisions made under a superseded planning framework without demonstrated operative consequences under the statutory framework now in force. The appeal has therefore not been

shown to retain a practical effect or result within the meaning of s 16(2)*(a)*(i) of the Superior Courts Act.

It is not in the interests of justice to decide the appeal

[32] Although the Court retains a discretion to determine a moot appeal, that discretion must be exercised in accordance with the interests of justice.[9] Relevant considerations include whether the proposed order would have a practical effect on the parties or others; the nature and extent of that effect; the importance and complexity of the issues; the fullness of the argument; and the value of resolving questions that may affect future litigation.

[33] The importance of an issue is relevant, but does not by itself require the Court to determine a dispute that has ceased to present a live controversy. The respondents' reliance on the public importance of the issues must be considered in that broader context. Electricity planning, constitutional compliance and environmental protection are matters of considerable public importance. The question, however, is not whether those interests warrant judicial protection, but whether their protection requires this Court to determine this appeal now, despite the absence of a demonstrated practical consequence.

[34] In my view, it does not. The impugned decisions have not been implemented, the High Court declared the Minister's determination unconstitutional, and the planning framework has since changed. The parties have not established that a successful appeal would restore a presently available lawful basis for the proposed procurement of 1 500 MW of coal-fired capacity, materially alter the parties' legal positions under the current framework, or determine a legal question whose resolution is necessary to decide an existing or

[9] *Independent Electoral Commission* fn 6 para 11; *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exportation and Exploitation SOC Ltd and Another* [2020] ZACC 5; 2020 (6) BCLR 748 (CC); 2020 (4) SA 409 (CC) paras 46-56.

sufficiently identified future controversy. The Court would accordingly be required to decide substantial legal questions without a demonstrated corresponding practical benefit.

[35] In this regard, the reasoning in *President of the RSA v Democratic Alliance*,[10] is instructive. There, the Constitutional Court declined to determine an otherwise moot appeal notwithstanding the contention that an authoritative ruling would provide guidance for future exercises of executive power. The Court considered, among other factors, the absence of practical utility in the order sought, the relationship between the legal question and the underlying proceedings, and the availability of a future case in which the issue could appropriately be determined. The judgment does not establish that public importance is irrelevant to the exercise of the discretion. It establishes that the prospect of providing guidance, without a sufficient practical or judicial purpose, does not necessarily justify appellate adjudication.

[36] Those considerations apply here. The respondents' challenge was solely directed at the allocation of 1 500 MW of new coal-fired generation under IRP 2019, the Minister's determination and NERSA's concurrence. It was not a challenge to the legality of every future decision to procure coal-fired generation, nor did it seek a general prohibition on such generation. IRP 2025 does not contain the particular allocation under challenge. The legality of any subsequent coal procurement would therefore have to be assessed by reference to the statutory powers, planning instruments, decisions and procedural requirements applicable to that procurement.

[37] A determination of the validity of the impugned decisions under the superseded plan would not resolve those future questions. More specifically, it

[10] *President of the Republic of South Africa v Democratic Alliance and Others* [2019] ZACC 35; 2019 (11) BCLR 1403 (CC); 2020 (1) SA 428 (CC).

would not determine whether the Minister could lawfully depart from IRP 2025 in the circumstances contemplated by s 34(6) of the Electricity Regulation Act, whether the procedural requirements governing such a departure had been satisfied, or whether a subsequent procurement decision complied with the applicable law. Nor would the judgment dispense with any statutory requirements applicable to a fresh determination or procurement. The parties have not identified a sufficiently concrete future decision whose legality would materially turn on the determination of this appeal.

[38] The absence of first-instance findings on the defences advanced by the Minister and NERSA reinforces that conclusion. To the extent that those defences raise substantial questions capable of affecting the validity of the impugned decisions, their absence from the High Court's findings leaves the appellate court without a determination of issues potentially material to the outcome. That consideration does not independently preclude the exercise of the discretion. It does, however, weigh against deciding the appeal where the original allocation has been omitted from the successor plan and the parties have not demonstrated a practical consequence that requires an appellate court to resolve those questions now.

[39] The constitutional and environmental importance of the dispute does not alter this conclusion. Those interests remain capable of judicial protection through proceedings challenging a concrete decision taken under the operative planning and statutory framework. Such proceedings would permit the Court to consider the specific decision, the legal authority invoked, the applicable planning instruments, the relevant decision-making record and the grounds of challenge. They would also provide an appropriate opportunity to determine any recurring constitutional or administrative-law question that is necessary to resolve the dispute before the Court.

[40] I accordingly consider that the public-interest argument does not justify exercising the discretion to determine this appeal despite its mootness. This conclusion does not rest on the proposition that important constitutional questions should be left unanswered, or that future proceedings will necessarily be brought. It rests on the narrower conclusion that the parties have not demonstrated sufficient practical utility, a sufficiently concrete need for authoritative guidance, or another compelling interest of justice that outweighs the absence of a live controversy, the change in the statutory framework, and the limitations of the record before the Court. The appeal should therefore not be decided in the exercise of the Court's discretion.

Costs

[41] The costs referred to in s 16(2)*(a)*(ii) of the Superior Courts Act are the costs incurred in the court against whose decision the appellant is seeking to appeal, not the costs in the appellate court.[11] The respondents are non-profit organisations who describe themselves as advocates for climate- and environmental justice. They enforced fundamental rights in the High Court, namely environmental and children's rights and are thus entitled to the protection against an adverse costs order as set out in *Biowatch*.[12] Apart from this, they have already incurred substantial costs, they were successful in the High Court and were thus entitled to defend that judgment. Consequently, there are no exceptional circumstances for this Court to reassess the costs order made by the High Court. For the avoidance of doubt, nothing in this judgment should be construed as endorsing the High Court's order on the merits.

[42] The same considerations apply in relation to the costs of appeal. The overriding objective concerning costs in an appeal which has become moot or

[11] *John Walker Pools v Consolidated Aone Trade & Invest 6 (Pty) Ltd (in liquidation) and Another* [2018] ZASCA 12; 2018 (4) SA 433 (SCA) para 8.
[12] *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).

produces no practical effect or result, is to do justice to the parties. In this regard, relevant considerations include the following: the point at which the appeal was no longer relevant or practical; when the parties learnt about its mootness or may have anticipated to learn about it; the size of the appeal record; the extent of the costs already incurred and that will be incurred if the appellate proceedings are not promptly terminated; and the time it would probably take for an appellate court to decide the merits of the moot appeal.[13]

[43] Applied to the present case, the appeal record and costs thus far incurred, are substantial. In light of the publication of IRP 2025 on 28 October 2025, and the exclusion of coal-fired electricity generation from that plan, the Minister ought to have known that the appeal was no longer relevant nor practical. As demonstrated above, the grounds upon which the Minister contends that the appeal is not moot are untenable, and what is sought in effect is an advisory opinion from this Court. In the circumstances, fairness dictates that the Minister should pay the respondents' costs of appeal.

[44] In the result, the following order is issued:

1 The appeal is dismissed under s 16(2)*(a)*(i) of the Superior Courts Act.

2 The appellant shall pay the costs of appeal of the first, second and third respondents, including the costs of two counsel.

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A SCHIPPERS

JUDGE OF APPEAL

[13] *John Walker* fn 11 para 10.

Appearances:

For appellant:	M C Erasmus SC with M Bronkhorst and L Mokgoroane
Instructed by:	State Attorney, Pretoria
	State Attorney, Bloemfontein

For first, second and third respondents:	C Mcconnachie and T Pooe
Instructed by:	Mchunu Attorneys, Rosebank
	Phatshoane Henney Attorneys, Bloemfontein

For *amicus curiae*:	R M Courtenay with M C Letsoalo III
Instructed by:	Centre for Child Law, Pretoria
	Phatshoane Henney Attorneys, Bloemfontein.