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**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
OF GUYANA**

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION

2023-HC-DEM- CIV-FDA- 456

BETWEEN: -

In the matter of an Application for Orders of Administrative Relief under sections 4(1)(a), 5 and 8 of the Judicial Review Act (Cap 3:06)

- 1. Vanda Radzik**
- 2. Elizabeth Deane Hughes**

Applicants

-and-

- 1. Environmental Protection Agency, a body corporate established under the Environmental Protection Act (Cap 20:05)**

Respondent

- 2. Esso Exploration and Production Guyana Limited**
- 3. Attorney General of Guyana**

Added Respondents

**AFFIDAVIT IN DEFENCE OF THE ATTORNEY GENERAL OF GUYANA,
THE SECOND NAMED ADDED RESPONDENT**

I, **WINSTON BRASSINGTON**, of 108 Cowan Street, Kingston, Georgetown, being duly sworn MAKE OATH AND SAY as follows:

1. I am the Head of the Gas to Energy Task Force (the Task Force) attached to the Government of Guyana. The Task Force was established in September 2020 to manage and implement the Gas to Energy Project. My duties as Head of the Task Force include, but are not limited to, the coordination, oversight and project management of the Gas to Energy Project, and engagement with the various Ministries, Agencies and local and international stakeholders and contractors for the timely implementation of the Gas to Energy Project. I am therefore duly authorized to depose and swear this Affidavit on behalf of the Attorney General of Guyana, the Second Named Added Respondent.
2. The facts deposed herein are within my personal knowledge and are true and correct, save where stated to be on information and belief, or are available to me from records which are in my custody and possession, in which case I verily believe same to be true and correct.
3. I have read the Amended Fixed Date Application filed herein on 22 June 2023 ("**the Application**" or "**the FDA**") and the Affidavit of Vanda Radzik and Elizabeth Dean Hughes sworn and filed on the same date in support thereof ("**the Applicants' Affidavit**") and save and except where expressly admitted, I deny each and every averment of fact and contention of law made and contained therein as if the same had been set out verbatim and traversed seriatim.

4. I admit the averments contained in paragraphs 3, 4, 5, 7, 8 and 10 of the Applicants' Affidavit.
5. I specifically deny the allegations and/or averments contained in paragraphs 11, 12 and 14 of the Applicants' Affidavit.
6. I make no admission and/or have no knowledge of the averments contained in paragraphs 2, 6, 9, 10 and 13 of the Applicants' Affidavit.
7. The Gas to Energy Project ("**the GTE Project**") was conceptualised by the Government of Guyana in 2020 as a national transformational project to, *inter alia*, lower the cost of electricity, reduce energy costs to, in turn, enable the expansion of the manufacturing and industrial sectors, promote economic diversification, and reduce the overall cost of living.
8. The Gas to Energy Project includes the construction and operation of a 12-inch, 225km pipeline from the Liza Phase 1 and Phase 2 Floating, Production, Storage and Offloading (FPSO) vessel, which will transport a volume of natural gas to be delivered to an onshore integrated natural gas liquids fractionation plant and combined cycle power plant, for the generation of 300MW of electricity.
9. In December 2022, the Government of Guyana contracted for the Engineering, Procurement and Construction (EPC) of an integrated power plant and natural gas processing facility to be constructed at Wales, West Bank Demerara, which will be owned and operated by the Government of Guyana and is expected to generate 300MW of electricity, with the primary objective of providing low-cost reliable electricity to the public, with generation costs of electricity expected to be less than half the current costs derived from imported heavy fuel oil.

10. As part of the GTE Project, and in preparation for the integrated facility, Esso Exploration and Production Guyana Limited (**EEPGL**) is responsible for the laying and construction of the offshore and onshore pipeline, and the performance of the initial enabling works at the site, including, initial site preparation, construction of a materials offloading facility and construction of access roads and bridges.
11. As part of the GTE Project, the Government of Guyana was responsible for acquiring lands pursuant to the *Acquisition of Lands for Public Purposes Act, Chap. 62:05* to enable construction of the onshore gas pipeline. These lands are located along the pipeline route from Plantation Nouvelle Flanders to Wales Estate, West Bank of Demerara.
12. On 24 June 2021, EEPGL submitted an application to the Environmental Protection Agency (**EPA**) for Environmental Authorisation to undertake the Gas to Energy Project and the activities associated therewith.
13. On 25 November 2022, the EPA granted Environmental Permit No. 20210528-NGPLE ("**the Environmental Permit**") to EEPGL under the Activity label "*Gas to Energy Project – Development of Natural Gas Transport Pipeline, Materials Offloading Facility and Natural Gas Liquids Plant, Offshore Guyana and Region 3, Onshore Guyana.*"
14. The Applicants seek, *inter alia*, an order of *certiorari* to quash the decision of the EPA to grant the Environmental Permit to EEPGL on the basis that EEPGL's application for Environmental Authorisation, which resulted in the granting of the Environmental Permit by EPA, did not comply with *Regulation 17(2)(c)(ii) of the Environmental Protection (Authorisation) Regulations 2000* (the Regulations), in that the application "*failed to include or provide any proof of ownership, a lease or other agreement with the land-owners*

of the said areas, as required by Regulation 17(2)(c)(ii) of the Regulations”.
[paragraph 6 of the Applicants’ Affidavit].

15. *Regulation 17(2)(c)(ii) of the Regulations* provides:

“An application for an environmental authorization...shall contain the following information:

....

(c) proof that the applicant either owns the facility or has a lease or other agreement with the landowner or occupier to enable the applicant to conduct the activity on the facility or has legal rights or ability to conduct the activity without the consent of the landowner or occupier”.

16. I am advised by my Attorneys-at-Law and verily believe that the Applicants, in reliance on a narrow construction of *Regulation 17(2)(c)(ii)* of the Regulations, failed and/or refused and/or neglected to recognise that the Regulation also speaks to having the requisite *“legal rights or ability to conduct the activity”* in respect of which the Environmental Authorisation is sought. In this regard, I am advised by my Attorneys-at-Law and verily believe that this FDA is wholly misconceived.

17. I am therefore advised by my Attorneys-at-Law and verily believe that at all material times, EEPGL had the requisite permission, legal rights, or ability to conduct the activities associated with the GTE Project.

18. The Gas to Energy Project comprises three (3) main components, which said activities include:

- (i) the construction and laying of the offshore pipeline;
- (ii) the construction and laying of the onshore pipeline from the pipeline landing point at Nouvelle Flanders to Wales and within the Wales Estate; and

(iii) the construction of the power plant and natural gas processing plant within the Wales Estate.

18. Pursuant to my duties as Head of the Task Force in engaging local stakeholders regarding the GTE Project, I invited Mr. Kemraj Parsram, the Executive Director of the EPA, in early June 2021 to a meeting to discuss the GTE Project. At the said meeting, I informed Mr. Parsram that the Government of Guyana was engaged in the process of reviewing the route for the pipeline and provided an overall understanding of the GTE Project.
19. Following the meeting in early June 2021, and upon my recommendation, a site visit was conducted on 4 June 2021 by the EPA, EEPGL and the Ministry of Natural Resources, along the pipeline route to familiarize EPA with the intended pipeline route. A follow-up meeting was held on 8 June 2021 between Task Force and the EPA regarding the site visit.
20. By 23 June 2021, the general route for the pipeline was confirmed for further surveying and technical optimisation and works, and I issued a letter to EEPGL confirming the finalisation of the route. Hereto attached and marked “**WB 1**” is a copy of the said letter.
21. I am aware that by this time, on 24 June 2021, EEPGL had applied to the EPA for an Environmental Authorisation relative to the GTE Project, as EEPGL reports to the Task Force on all relevant actions it takes regarding the GTE Project. These are matters to which I am privy as part of my project management and administration duties.
22. By letter dated 29 July 2021 issued by Mr. Enrique Monize, Commissioner of State Lands, the Guyana Lands and Survey Commission (GLSC), as guardian of all public lands under the *Guyana Lands and Survey Commission Act, Chap. 59:05*, and pursuant to the exercise of its authority

under the *State Lands Act, Chap. 62:01*, appointed EEPGL as an agency of GLSC to access and enter upon public lands in the pathway of the Gas to Energy Project. This permission was granted to EEPGL in order to:

- *“undertake and/or carry out activities related to the Gas to Energy Project on the surface and in the subsurface of the Land (“the Activities”) for the duration of the Activities, including Activities such as onshore geotechnical surveys, environmental studies. Further, such activities shall also include the bringing on, storage and deployment on the Land any plant, machinery, equipment, stores or materials which are required for carrying out said activities.”*

23. I am aware of this letter as such matters are usually sent to me, for information and notification purposes, as Head of the Task Force, given the intricate working relationship and collaboration required on a project of this magnitude, that is, the GTE Project, among the different State agencies and Ministries of Government. A copy of the said letter is hereto annexed and marked “**WB 2**”.

24. By that said letter, the Commissioner of State Lands also indicated that the GLSC would seek the permission of the Minister of Public Works to appoint EEPGL as agents of the Commissioner of State Lands and of the GLSC, to enter upon private lands to be acquired for the GTE Project, to survey or otherwise examine the lands, and to *inter alia*, conduct geotechnical and geophysical work. The permission to access and enter private lands was conditional on an Order to that effect being gazetted.

25. This permission was indeed gazetted on 7 August 2021 in accordance with the *Acquisition of Lands for Public Purposes (Gas Pipeline Route) Order*

No. 18 of 2021. Hereto annexed and marked “**WB 3**” is a copy of the said Order.

26. Following the said Gazetted Order, EEPGL was appointed an agent of GLSC pursuant to letter dated 3 September 2021, “*for the purpose of surveying, save and except cadastral surveys, or otherwise examining the lands described in the Schedule*” to the Gazetted Order. A copy of the said letter is hereto annexed and marked “**WB 4**”.

27. I am advised by my Attorneys-at-Law and verily believe that this series of correspondences aggregate to provide proof of EEPGL’s legal rights or ability to conduct the activities associated with the Gas to Energy Project, without the consent of the landowner or occupier, thereby satisfying the requirements of *Regulation 17(2)(c)(ii) of the Regulations*.

28. I am further advised by my Attorneys-at-Law and verily believe that the decision to grant the Permit to EEPGL emanated from a decision-making process by the EPA that ensures that it is provided all the requisite information before it grants the application for Environmental Authorisation; the application process is therefore not limited to a one-off or isolated submission by the Applicant.

29. In fact, I am further advised by my Attorneys-at-Law and verily believe that upon submission of an Application, the EPA is empowered to request the submission of additional documents and/or information as proof of eligibility at various stages of the decision-making process prior to the granting of a permit in accordance with *Regulations 9 and 10 of the Regulations*.

30. In or around April 2022, Mr. Kemraj Parsram, Executive Director of the EPA, contacted me as Head of the Task Force, and requested additional

information regarding EEPGL's legal permission or ability to conduct the activities along the GTE Pathway. He referred to my letter dated 23 June 2021 to EEPGL (*supra*, "WB 1"), which was referenced in EEPGL's Application at Item 12 under the heading, 'Description of the Project Site'. I confirmed that the pipeline route had been finalized with the consequence that certain lands had to be compulsorily acquired by the Government of Guyana, which process the different Ministries of Government had begun to engage.

31. In effect, therefore, I confirmed to Mr. Parsram that the public acquisition process, which required compliance with statutory procedure, had begun. The public acquisition process included conducting the cadastral surveys, valuations of the lands identified following the cadastral surveys, consultations with the affected landowners, compensation to landowners based on the valuations received, and vesting the lands in the State by Gazetted Orders.
32. I am advised by my Attorneys-at-Law and verily believe that the EPA's request for additional information from me, as Head of the Task Force, Government of Guyana, was done in accordance with **Regulation 9(1)**, which provides, "*the Agency may, while considering an application for environmental authorisation, request **additional oral... information...**from a local authority or other government agency.*"
33. As such, I am informed by my Attorneys-at-Law and verily believe that at all material times, the Permit was granted in compliance with the requirements of the **Environmental Protection Act** and the stipulations of its **Regulations**.

34. Further, the landowners of the compulsorily acquired lands for the GTE Project were informed of the Project, and of the requirements associated therewith, at every phase of the project. Hereto annexed in a bundle and marked "WB 5" is a sample copy of a letter signed by the Attorney General & Minister of Legal Affairs and dispatched to landowners informing of meetings to discuss the GTE Project and the Government's intended acquisition of lands for the Project, and Notice of Meeting with residents of affected communities, published in Kaieteur News dated 22 September 2022.
35. As Head of the Task Force, I attended several of those public meetings to engage the landowners, along with the Attorney General & Minister of Legal Affairs, the Minister of Public Works, the Minister of Natural Resources, the Minister of Central Housing and Planning Authority and their teams, as well as the Task Force team and the teams from the Valuation Division and from the Guyana Lands and Surveys.
36. I am aware that throughout the process of acquisition, the landowners were provided legal representation; that all of them agreed to accept the compensation offered by the Government and have agreed to sell their lands to the Government and for the Government to acquire title to those lands by invoking the provisions of the *Acquisition of Lands for Public Purposes Act*.
37. In pursuance thereof, all the lands associated with the GTE Project have since been acquired in accordance with the *Acquisition of Lands for Public Purposes Act*. Hereto annexed in a bundle and marked "WB 6" are copies of the relevant Orders for the entering upon and acquisition of the said lands, namely:

- (i) Acquisition of Lands for Public Purposes (Gas Pipeline Route) Order, 2021;
- (ii) Acquisition of Lands for Public Purposes (Gas Pipeline Route) (No.2) Order, 2022;
- (iii) Acquisition of Lands for Public Purposes (Gas Pipeline Route) (No.3) Order, 2023;
- (iv) Acquisition of Lands for Public Purposes (Gas Pipeline Route) (No.4) Order, 2023;
- (v) Acquisition of Lands for Public Purposes (Gas Pipeline Route) (No.5) Order, 2023;
- (vi) Acquisition of Lands for Public Purposes (Gas Pipeline Route) (No.6) Order, 2023; and
- (vii) Acquisition of Lands for Public Purposes (Gas Pipeline Route) (No.7) Order, 2023.

37. To date, there has been no complaint by any of the said landowners that their lands were entered upon without proof of ownership, lease or other agreement between them and EEPGL or any other person and/or entity associated with the said Project.

38. I am advised by my Attorneys-at-Law and verily believe that the Applicants are not landowners or occupiers or possessors of any legal or equitable interest whatsoever in respect of any of the lands acquired. By instituting these proceedings, they are not only busybodies, but are obstructionists to a project of national importance and fundamentally essential to the public good and interest. Further, the complaint which they have made in these proceedings is of nuisance value at worst, and at best, is one that is wholly innocuous having regard to all the facts and circumstances.

39. Moreover, I am advised by my Attorneys-at-Law and verily believe that the Fixed Date Application places in jeopardy the public's interest at large. The Gas to Energy Project is intended to produce a reliable source of electricity for the people of Guyana. No doubt, this project by its monetary value, size

and purpose is one of national and public importance, in the national interest, and for the public good.

40. I am aware that the GTE project investment is valued at approximately US\$1,700,000,000.00 (one billion seven hundred million United States Dollars) which includes all associated project costs incurred under respective contracts by the Government of Guyana, its Contractors, Operators and Co-venturers.
41. The State's developmental trajectory in respect of the generation of low-cost electricity for users in Guyana and ultimately the realization of a lower cost of living for Guyanese will be disrupted, the State's fiscal interest will be adversely affected, and the Government of Guyana would be placed in a position of breach in relation to contracts already entered into for the construction of the power plant and would likely attract litigation.
42. I am advised by my Attorneys-at-Law and verily believe that the Executive determines policy, and the GTE Project, for all the reasons set out above, is a considered policy decision of high national importance for the public interest and benefit; that in matters of policy and public projects undertaken by the Government, provided that the decision contravenes no law and there is no evidence of *mala fides*, it would not be in the public interest for the courts to encroach into those areas which are the function of the Executive. In these circumstances, where the acquisitions have been completed in full compliance with **Regulation 17(2)(c)(ii)**, and there is no evidence whatsoever of *mala fides*, this policy decision ought not to be impugned.
43. If this Fixed Date Application is allowed to succeed, naturally it will have an adverse impact on the GTE Project to the detriment of the national

interest and the public good. The Gas to Energy Project is currently in progress, with a projected date of completion in December 2024. I am advised by my Attorneys-at-Law and verily believe that a grant of an order of *certiorari* to quash the decision of the EPA to grant the Environmental Permit will not only be erroneous in law, all the requisite legal compliances having been achieved, but can result in the stymieing of billions of dollars in investment and ongoing works.

44. Further and in any event, I am advised by my Attorneys-at-Law and verily believe that the EPA, and not the court, is the sole authority vested with the power and/or discretion to grant an Environmental Permit, taking into consideration the full breadth of the *Environmental Protection Act and Regulations*, including all 19 considerations of *Regulation 17(2)(c)*, the Application for Environmental Authorisation and the additional oral information the EPA obtained from me regarding EEPGL's legal permission, rights or ability to conduct the activities associated with the GTE Project.
45. Given the cumulative effects of the preceding paragraphs, I am advised by my Attorneys-at-Law and verily believe that the Fixed Date Application herein has little, or no prospect of success as the orders sought herein are now moot, there being no live issue and/or dispute to be determined and/or resolved.
46. As such, I am advised by my Attorneys-at-Law and verily believe that the Applicants' FDA, which seeks to quash the Environmental Permit and to require its re-application in circumstances of a completed and closed acquisition process, constitutes an abuse of the process of the Court, is frivolous, vexatious, misconceived and an uneconomic use of judicial time and resources.

54. In the interest of the administration of justice, it is prayed that this Honourable Court strikes out the Application herein with costs to the Respondents.

55. This Affidavit was drawn upon the instructions of **Shoshanna V. Lall, Assistant Solicitor General, Patricia Shepherd and Laurel Dundas, State Counsel, Attorneys-at-Law** for and on behalf of the Second Named Added Respondent Applicant, **The Attorney General of Guyana, Mohabir Anil Nandlall SC MP**, whose address for service is the Attorney General's Chambers, 95 Carmichael Street, North Cummingsburg, Georgetown, Demerara.

Sworn before me at the City of Georgetown
In the County of Demerara,
On this 14th day of July, 2023.

BJR Baksh

.....
Commissioner for Taking Affidavits

Winston Brassington

.....
WINSTON BRASSINGTON

To: **Mrs. Abiola Wong-Inniss,
Ms. Melinda Janki and
Mr. Joel Ross**
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