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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

**THE NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY**

QUESTION NO. 211

DATE PUBLISHED: 12 FEBRUARY 2021

J Steenhuisen (Democratic Alliance) to ask the Minister of Trade and Industry

- (1) Whether the Richards Bay Industrial Development Zone entered into a lease agreement with (a) Power and Water Developments (Pty) Ltd (2015/3351116/07) and/or (b) Richards Bay Gas Power 2 (Pty) Ltd, represented by a certain Mr Dion Wilmans; if not, what is the position in this regard; if so, what are the details of each lease agreement entered into with each of the specified companies, including (i) the period of the lease, (ii) any costs and other amounts involved and (iii) any other relevant details;
- (2) Whether all payments due in terms of the lease agreements owed to the Richards Bay IDZ have been paid; if not, what are the details of the (a) amounts owed in arrears and (b) aged analysis of the arrear amounts;
- (3) Whether any of the specified lease agreements were ceded to any other company; if not, what is the position in this regard; if so, (a) what are the relevant details in each case and (b) has he found that the process to cede the agreement(s) met all the requirements in terms of any relevant law and/or regulation;
- (4) Whether he intends to take any action regarding the alleged irregular ceding of one of the lease agreements to Phakwe Power (Pty) Ltd (2012/021655/07); if not, why not; if so, what are the relevant details?

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REPLY

The Special Economic Zone Act, 2014 (Act No 16 of 2014) (herein the “Act”) and the regulations made in terms of section 25(7) of the Act sets out the respective roles and responsibilities of role-players, including and the governance and management framework which must be followed in respect of each special economic zone (“SEZ”).

Section 25(1) of the Act provides that once an SEZ has been designated by the Minister of Trade, Industry and Competition, the licensee must establish an entity to manage the SEZ; and provide the entity with the resources and means necessary to manage and operate the SEZ. Section 25(5) of the Act provides that the licensee must appoint a Special Economic Zone Board which must be responsible for the efficient governance and management of the business affairs of that SEZ entity. In the case of the Richards Bay Industrial Development Zone (RBIDZ), the licensee is the KwaZulu-Natal provincial government.

As such the KwaZulu-Natal provincial government would be responsible for the oversight of the day-to-day operations of the RBIDZ.

I have however been provided with the following response from the Chairperson of the Richards Bay Industrial Development Zone, Mr Mel Clark, which I quote in full:

- (1) “Based on the information received from the Richards Bay Industrial Development Zone Company SOC Ltd (“RBIDZ”), the IDZ has no lease agreement with Power and Water Developments (Pty) Ltd (2015/3351116/07) but does have a lease agreement with Richards Bay Gas Power 2 (Pty) Ltd (Reg No 2014/185927/07)(“RBGP2”) which was entered into in April 2019. RBGP2 was represented by inter alia, Mr Dion Wilmans when the lease was entered into.
- (2) While the terms of lease between the RBIDZ and its investors are confidential as they may contain information which is commercially sensitive and/or can affect the

commercial competitiveness of investors, RBIDZ confirmed that the period of the lease was from the date of signing until three years after the end of any power purchase agreement entered into by RBGP2, with provision for renewals and subject to certain resolutive and suspensive conditions and other standard clauses relating to cancellation etc (RBGP2 has submitted a bid for the Risk Mitigation Independent Power Producer Programme). The agreement is a standard commercial agreement and provides for a nominal rental to be paid on part of the lease area until full operations commence. The lease only has one unusual feature which is unique to this lease, namely a provision that the full operational rental is payable on a 5 ha portion of the 17,2 ha lease area while the usual nominal rate applies to the balance of the site until the plant becomes operational. The standard lease rate of the RBIDZ for vacant developed land in Phase 1F is R7,34 m2 per month excluding VAT, together with rates, utilities and insurances as well as a management fee. This standard rate excludes certain discounts and incentives which are intended to promote job creation, exports, inclusivity and land uptake, which can reduce the figure. The lease also provides for penalties if certain undertakings are not met.

(3) All amounts payable under the lease have been paid except the rentals for January 2021 and February 2021 where the tenant has applied to the RBIDZ for relief on various grounds, including that a road runs over parts of the 5 ha for which it is paying full operational rental, which it believes renders it unusable and for which it is seeking relief. The investor is also seeking relief from being charged the full operational rental for the 5 ha portion of the lease area prior even to it commencing construction.

(4) While lease agreements entered into by the IDZ do seek to assist investors to secure funding by providing for step-in-rights and or suspended leases, no such transactions have to date been approved in regard to this investor, either to Phakwe Power (Pty) Ltd (2012/021655/07) or at all and the lease continues to be between the RBIDZ and RBGP2. The RBIDZ has however consented to a change in the shareholding of RBGP2 to another entity.”

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