

## RENERGEN LIMITED

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("Reenergen" or "the Company")



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## IMPLIED THREAT TO MINERAL RIGHTS IN SOUTH AFRICA

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The Company is issuing the following statement to update shareholders about the ongoing actions involving its majority-owned subsidiary, Tetra4 and Springbok Solar Power Plant (RF) Proprietary Limited ("SSPP").

### Highlights:

- **Helium is currently included** in Tetra4's Production Right;
- **Helium recognised as part of petroleum** in the new Upstream Petroleum Resources and Development Act;
- Tetra4 holds a valid and **undisputed petroleum production right (regardless of the challenge on helium)**;
- **Construction without valid and complete Section 53 consent undermines mining law** for all minerals in South Africa, creating a dangerous precedent and leading to investors losing confidence in SA mining law; and
- SSPP submitted an environmental authorisation request without identifying Tetra4 and prior to any consultation with Tetra4, **all consultation occurred after the submission was already made, and all consultation was limited to environmental**. No Section 53 consultation or technical discussions ever took place.

### Recognition of Legislative Changes

The Company congratulates the President of South Africa for signing the Upstream Petroleum and Resources Development Act into law on the 25th of October 2024, with the date of commencement thereof to be proclaimed. This Act notably expands the definition of petroleum to include "**associated** liquid or gas, any liquid or solid hydrocarbon or combustible gas," which effectively categorizes helium as an associated gas of petroleum rather than a mineral. Additionally, helium **does not qualify as a "mineral"** under the current definition contained in the Mineral and Petroleum Resources Development Act ("MPRDA") rendering the appeal by SSPP to Tetra4's right to helium without merit, as the helium cannot be separated from petroleum underground prior to its extraction. More importantly, helium is not produced by a geological process but rather through a result of radioactive decay, which is a physical process or nuclear process.

Regardless of the outcome of the appeal against the explicit inclusion of helium into Tetra4's Production Right, SSPP commenced construction without obtaining a valid Section 53 consent in an area where Tetra4 has held **an undisputed onshore Petroleum Production Right** since 2012.

## **Broader Implications for Mineral Right Holders**

The ongoing dispute between SSPP and Tetra4 has ramifications that extend beyond this specific dispute. There is an alarming trend where new developers initiate projects without securing the necessary permissions or Section 53 consent letters of support from all the existing mineral and petroleum right holders. This practice threatens to set a dangerous precedent whereby the construction of such projects proceeds without proper and meaningful consultation or consent/support from all right holders, potentially invalidating the pre-existing rights and protections conferred upon such right holders under the MPRDA.

## **Investor Confidence at Risk**

Such actions could significantly erode investor confidence across all mineral and petroleum extraction sectors, as construction without a valid and complete Section 53 consent results in sterilisation and permanent stripping away of valuable mining reserves that can no longer be accessed by the rightful holders of mineral and production rights. Uncertainty in legal tenure erodes investment value indiscriminately, and this is true for **all resources**, including both minerals and petroleum. A decision allowing the construction of SSPP without a valid and complete Section 53 consent within Tetra4's production right area will set a dangerous precedent with very far-reaching consequences for the entire sector. This, in turn, could have severe economic consequences for South Africa, where mining contributes to a significant portion of the national economy.

## **Consultation**

In 2022, Tetra4 was approached by Subsolar Energy Proprietary Limited ("Subsolar") regarding the environmental authorisations for two of its solar projects. During these discussions, Subsolar disclosed the existence of a third project (namely SSPP). For the initial two projects, Subsolar initiated a separate series of engagements with Tetra4 to obtain the required letters of support for the Section 53 consent. However, no such engagement was ever undertaken for SSPP. Tetra4 simply assumed the same process would follow in due course as precedent was established.

In May 2023, Subsolar, ***through electronic communication between directors of Tetra4 and Subsolar on the topic of Tetra4's production right and more specifically the requirement for the Section 53 consent***, Subsolar requested a letter from Tetra4 granting them support/permission to build, allowing them to obtain a Section 53 consent for their various projects which we believed would have included SSPP. Tetra4 indicated that it would issue such letters without requiring compensation on the basis that Subsolar consulted with Tetra4 and to provide for future access to the gas-bearing structures. This condition was acknowledged by Subsolar's directors, but no further correspondence in respect of SSPP was pursued thereafter while the engagements continued on the other two developments.

Important to note is that at the time of Subsolar's request for written support in lieu of their Section 53 consent application, SSPP had already been sold by Subsolar one month prior, unbeknown to Tetra4. This was never brought to the attention of Tetra4 until it was disclosed in recent court filings.

During the same time period in May 2023, a meeting was held between Subsolar and Tetra4 to discuss an overview of the various projects in Subsolar's portfolio and to obtain a holistic overview of the Virginia Gas Project, including an overview of the extent of Tetra4's production right and proven reserves. Coincidentally, an employee of Sola Group (one of the new shareholders of SSPP), who is now a current director at SSPP, was introduced into the meeting by Subsolar as part of a development team responsible for project implementation.

During all of these engagements, no disclosure was ever made that Subsolar had been sold to SSPP, and that this employee was part of the new owner's management. As a matter of course in business, it is normal practise for the seller to warrant to the purchaser the need for additional authorisations, consents, licenses and or permits still required or outstanding, or if they are aware of anything material that should be disclosed. It would seem unusual that this acknowledged deficiency in approvals was never disclosed in the sale and purchase of SSPP.

Since the May 2023 interaction, SSPP has not engaged meaningfully or more importantly, in a practical, technical manner in respect of any detrimental impact that the SSPP could have on Tetra4's production right, knowing that Tetra4 is a petroleum right holder and not a mineral right holder, and had made specific requests to be consulted to obtain Tetra4's support for a Section 53 consent. They chose to proceed with construction knowingly. We struggle to understand why the current SSPP director never engaged with Tetra4 on any Section 53 discussion despite being aware of the extent of Tetra4's production right from May 2023.

Despite SSPP publicly asserting that they "engaged" Tetra4 on several occasions, they omit to mention that their purported consultation only took place after an EIA had already been **finalised and submitted** to the competent authorities for approval, without prior identification or consultation with Tetra4, and the EIA was subsequently granted several weeks later. Tetra4 was only consulted on the respective environmental authorisation application **after** the submission had already been made, despite the repeated public statements of ongoing consultation by SSPP. This was also limited to e-mail engagement (not considered formal engagement) prior to receiving their final environmental authorisation process, which makes the engagements with Tetra4 appear to be little more than window dressing. Despite that, Tetra4 made it clear that it was the holder of a production right over the area, and this should have prompted formal consultation and engagement under Section 53 of the MPRDA.

What remains unclear is whether SSPP's investors and funders were made aware that Tetra4's support was still required for obtaining a valid Section 53 consent before SSPP decided to commence construction on Tetra4's production right area, and as a result, sterilised Tetra4's access to gas on the land in question.

It also raises significant concerns about how SSPP failed to identify Tetra4, a primary impacted stakeholder and elected not to engage with Tetra4 during the scoping or EIA phase of the consultation, especially when it is a materially affected stakeholder, one that has commenced construction in 2019, and which are currently operating within a 30 km radius and is also a well-known and very visible stakeholder entity in the media and broader public domain. By their own submission to the relevant competent authority, their EAP stated they "identify impacted parties within a 30 km radius". Yet, the Tetra4 facility, located a mere 10 km from the SSPP site as the crow flies, was overlooked during this critical consultation process.

Tetra4 has filed an appeal in terms of Section 96(1) of the MPRDA to the Department of Mineral Resources ("DMRE") to consider the entire application as well as the resultant arbitrary decision by the Regional Manager, to grant the Section 53 consent, and hopefully receives an appeal decision that sets aside, what seems to be an entirely irrelevant, unreasonable and unjustifiable decision. Tetra4 further filed an application in terms of Section 96(2) for the suspension of their current Section 53 consent, subject to the appeal decision, which would effectively require SSPP to halt construction on the basis that further construction would lead to sterilisation of Tetra4's production right on that land. Unfortunately, by the time the application was heard, the construction on the area in question was already advanced, rendering a Section 96(2) application as being ineffectual.

## **Upholding Mineral Rights**

The situation underscores a crucial issue: if the **DMRE condones construction without obtaining consent from existing mineral and petroleum right holders**, it could lead to a scenario where **all mineral and petroleum rights in South Africa are subordinated to developments** on the mining right area or production area, regardless of the fact that these rights are lawful limited real rights that were first in time. This may effectively amount to the dispossession of mineral and petroleum rights and result in a precedent that is entirely contrary to the objectives of the MPRDA. This shift would severely undermine investor confidence in the mining industry as a whole, not just petroleum.

Tetra4 remains firm in that it is only seeking to protect access to the known gas-bearing fault lines and structures in order to continue with its core business under the rights conferred to it by the DMRE in terms of the production right. On this basis, co-existence is certainly possible and requires no compensation by SSPP to Tetra4. However, to date, this consideration to co-exist has been refused by SSPP.

The Company remains hopeful that the rule of law will prevail and that measures will be taken to prevent such detrimental precedents from being established for the sake of the entire mining sector.

Johannesburg  
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