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Earthlife Africa Johannesburg
Centre for Environmental Rights
groundWork (Friends of the Earth South Africa)

ESKOM'S APPLICATION FOR INCREASED AIR POLLUTION FROM ITS KRIEL POWER STATION REFUSED

Johannesburg, Sunday, 23 March 2014 – Earthlife Africa Johannesburg (ELA) [1], groundWork [2] and the Centre for Environmental Rights (CER) [3] welcome the decision of Nkangala District Municipality (NDM) largely to refuse Eskom's request to relax its atmospheric emission licence for its Kriel Power Station in Mpumalanga.

Eskom applied to amend the licence in November 2013, notwithstanding that the MEC for the Mpumalanga Department of Economic Development and Tourism had, in May 2013, dismissed various appeal grounds Eskom had raised in relation to the licence.

Request to increase amount of air pollution released: Eskom had applied to increase the amount of particulate matter [4] it released by almost three times its licence limit for 26 or 27 days per month, and nearly four-and-a-half times the licence limit for four days per month until 1 April 2015. In its application to postpone compliance with minimum atmospheric emission standards, Eskom sought to increase its emissions of particulates even further until 1 April 2025.

In its variation application, Eskom stated that:

"...the circumstances under which Eskom's power stations are currently operating are far from normal, and so we request additional leniency at Kriel until particulate emissions have been reduced to the extent that Kriel can comply with the emission limits. The units will be brought into compliance between 2018 and 2023, when fabric filter plants are retrofitted".

Eskom's application was further based on the fact that emissions at Kriel were *"highly erratic, as a result of the unreliability of many of the plant components"*, and threatened that load-shedding was the inevitable result if Kriel were required to comply with its emission limit.

Eskom's variation request was opposed by the CER acting on behalf of ELA, groundWork, the Vaal Environmental Justice Alliance and ten community groups. In submissions opposing the amendment [5], the CER argued, on behalf of its clients, that Eskom effectively wanted permission to operate with non-functional pollution control equipment and allow only partially controlled emissions.

NDM refused Eskom's request, pointing out that the emission limit was negotiated and agreed by both Eskom and the Department of Environmental Affairs (DEA).

In addition to the request to increase its emissions, Eskom's variation application included the following:

Request to increase period for maintenance. Eskom also asked to relax the licence provision that normal maintenance and shut-down conditions should not exceed forty-eight hours, so that it provided for maintenance to be done for up to ten percent of the time per year, per stack. Eskom sought this indulgence on the basis of *"the constrained electricity supply situation and the fact that Kriel Power Station is an old power station and needs large amounts of maintenance"*.

Applying the precautionary principle [6], NDM also rejected this request, stating – as per the CER submissions - that Eskom had failed to assess the cumulative impact on the ambient environment, as it had only evaluated the impact of Kriel and Matla power stations.

NDM found that Eskom’s methodology for modelling the dispersion or distribution of its pollution for the higher emission standards did not take into account all potential weather conditions.

Request to resolve contradictory requirements for continuous emission monitoring. In relation to Eskom’s request to change the licence to resolve “contradictory” requirements for continuous emission monitoring (real-time and ongoing monitoring of emissions from the power plant, not periodic checks), NDM stated that Eskom’s request was inconsistent with what Municipal officials observed during a site visit to Kriel on 10 January 2014. NDM drew Eskom’s attention to the fact that the National Environmental Management: Air Quality Act, 2004 (AQA) provides that it is a criminal offence to supply false or misleading information in any licence variation application.

NDM decided that the licence should be amended to clarify certain monitoring requirements, but refused to relax the licence condition requiring all units to be fitted with continuous emission monitoring for the pollutants sulphur dioxide, particulate matter and nitrogen oxides by 2015. (Minimum emission standards have been prescribed for all of these pollutants under AQA).

Eskom’s application to postpone compliance with the Minimum Emission Standards. In December 2013, Eskom applied to postpone compliance with – and, in several cases, effectively to be exempt from – AQA’s air pollution minimum emission standards for 16 of their power stations. At the same time, Eskom also applied for variation of the conditions of the air quality licences for these stations. The CER has, on behalf of the same clients, objected to Eskom’s applications [7]. There are significant negative health impacts if Eskom’s application succeeds [8]. The decision of the National Air Quality Officer is awaited. It is hoped that the DEA’s decision will show the same commitment to legal compliance and regard for the health of South Africans as NDM has in its decision on Kriel.

FOOTNOTES

[1] Earthlife Africa seeks a better life for all people without exploiting other people or degrading their environment. Our aim is to encourage and support individuals, businesses and industries to reduce pollution, minimise waste and protect our natural resources www.earthlife.org.za

[2] groundWork is an environmental justice organisation working with community people from around South Africa, and increasingly Southern Africa, on environmental justice and human rights issues focusing on Air Quality, Climate and Energy Justice, Waste and Environmental Health. groundWork is the South African member of Friends of the Earth International www.groundwork.org.za

[3] The Centre was established in October 2009 by eight civil society organisations (CSOs) in South Africa’s environmental and environmental justice sector to provide legal and related support to environmental CSOs and communities. We opened our doors in April 2010.

The Centre’s mission is to advance the realisation of environmental rights as guaranteed in the South African Constitution by providing support and legal representation to civil society organisations and communities who wish to protect their environmental rights, and by engaging in legal research, advocacy and litigation to achieve strategic change www.cer.org.za

[4] Particulate matter is complex mixture of extremely small particles and liquid droplets and is made up of a number of components, including acids (such as nitrates and sulphates), organic chemicals, metals, and soil or dust particles. Particulate matter poses threats to human health in that exposure increases the risk of cardiovascular and respiratory diseases, and lung cancer.

[5] http://cer.org.za/wp-content/uploads/2014/03/CER-submission-on-variation-of-Kriel-AEL_11-Dec-2013_final.pdf and

http://cer.org.za/wp-content/uploads/2014/03/CER-additional-submission-on-variation-of-Kriel-AEL_16-Jan-2014.pdf

[6] The precautionary principle, as set out in the National Environmental Management Act, 1998, is that a risk-averse and cautious approach should be applied, which takes into account the limits of current knowledge about the consequences of decisions and actions.

[7] <http://cer.org.za/news/eskoms-applications-to-delay-compliance-with-emissions-standards-opposed-by-civil-society-groups>

[8] http://cer.org.za/wp-content/uploads/2014/02/Annexure-5_Health-impacts-of-Eskom-applications-2014-final.pdf and

<http://mg.co.za/article/2014-02-20-eskoms-disdain-for-deadlines-kills-thousands>

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