



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Dr T Mdluli
National Air Quality Officer
Department of Environmental Affairs
By email: tnmdluli@environment.gov.za

Copies to:
Mr Vumile Senene
By email: vsenene@environment.gov.za

Deidre Herbst
By email: herbstdl@eskom.co.za

Kristy Langerman
By email: rosske@eskom.co.za

Our ref: CER/RH
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Dear Dr Mdluli

DECISION ON APPLICATIONS FOR POSTPONEMENT OF COMPLIANCE TIME-FRAMES FOR MINIMUM AIR QUALITY EMISSION STANDARDS: REQUEST FOR CLARIFICATION

1. We address you on behalf of the following clients: groundWork, Earthlife Africa Johannesburg, the Vaal Environmental Justice Alliance, Greenpeace Africa, the South Durban Community Environmental Alliance, the Federation for a Sustainable Environment and the following community groups: the Highveld Environmental Justice Network; Middelburg Environmental Justice Network; Greater Middelburg Residents' Association; Guqa Community Service Centre; Southern Africa Green Revolutionary Council; Greater Delmas Civic Movement; and Schoongesicht Community Movement. Our clients are environmental and environmental justice non-governmental organisations concerned about the realisation of environmental rights, as well as community groups made up of members who are impacted by industrial atmospheric emissions, including those from coal-fired power stations and refineries. Our clients opposed Eskom's applications to postpone compliance with the minimum emission standards (MES).
2. Our clients have examined your decisions on Eskom's applications for postponement, and have various questions in relation to these decisions. Kindly provide us with urgent clarification on the matters set out below.

Discrepancies in the postponement periods

3. In several cases, the periods of postponement for which Eskom applied differ from those listed as "postponement sought" in the decision letters. These also sometimes differ from the postponement period granted. Whilst we recognise that the decision letters, rather than the table of decisions made available on

2nd Floor, Springtime Studios,
1 Scott Road, Observatory, 7925
Cape Town, South Africa
Tel 021 447 1647, Fax 086 730 9098
Email info@cer.org.za, www.cer.org.za

24 February 2015, contain the decisions, some of the postponements listed as “granted” on the table also do not tally with the postponement sought and/or with what is reflected in the decision letters. In some cases, what has instead been granted is a postponement for a different period or a different limit, rather than the postponement sought by Eskom. The following are the cases when there are discrepancies in the postponement periods:

Table 1: Discrepancies in the postponement periods stated in different parts of the postponement process

Power station	Pollutant	Period as per application	Period applied for as per decision	Period granted as per decision	Granted/declined as per decision
Arnot	PM	Indefinitely	None	None	No Decision
	SO ₂	Indefinitely	2020 - 2025	2020 – 2025	Granted
	NO _x	Indefinitely	2015 - 2020	2015 – 2020	Granted
Camden	PM	Indefinitely	2020 – 2025	No decision	No decision
	SO ₂	Indefinitely	2015 - 2020	2020 - 2025	Granted
	NO _x	Indefinitely	2015 - 2020	2015 - 2020	Granted
Duvha	PM	Present – 1 April 2015	2015 – 2020	2015 – 2020	No Decision
		1 April 2015 – 1 April 2024	2015 – 2020	2015 – 2020	Not Granted
		1 April 2024 – onwards	2015 - 2020	2015 - 2020	No Decision
	SO ₂	Indefinitely	2020 - 2025	2020 - 2025	Granted
	NO _x	Indefinitely	2020 - 2025	2020 - 2025	Granted
	PM	Present to 31 March 2018	2015 - 2018	1 April 2015 – 31 December 2016; 1 January 2017 – 31 March 2018	Granted
Grootvlei		1 April 2018 – 1 April 2020	2018 - 2020	1 April 2018 – 31 March 2020	Granted
		1 April 2020	No Decision	No Decision	No Decision
	SO ₂	Indefinitely	2015 - 2020	2020 - 2025	Granted
	NO _x	Indefinitely	2015 - 2020	2020- 2020	Granted
	SO ₂	Indefinitely	2015 - 2020	2020 - 2025	Granted
	NO _x	Indefinitely	2015- 2020	2015 - 2020	Granted
Hendrina	SO ₂	Indefinitely	2015 - 2020	2020 - 2025	Granted
	NO _x	Indefinitely	2015- 2020	2015 - 2020	Granted
Kendal	PM	Indefinitely	2020 - 2015	2025	Not Granted; compliant
	SO ₂	Indefinitely	2020 - 2025	2020 - 2025	Granted
Komati	PM	Indefinitely	2020 - 2025	2020 - 2025	Not Granted
	SO ₂	Indefinitely	2020 - 2025	2020 - 2025	Granted
	NO _x	Indefinitely	2015 - 2020	2015 - 2020	Granted
Kriel	PM	2015-2025	2015-2020	2015-2020	Granted
	SO ₂	2015-decommissioning	2020-2025	2020-2025	Granted
	NO _x	Indefinitely	Indefinitely	2015-2020	Granted
Lethabo	PM	Present-1 April 2015	2015-2020	1 April-31 December 2015	Granted
	SO ₂	Indefinitely	2015-2020	2020-2025	Granted
Majuba	SO ₂	Indefinitely	2020-2025	2020-2025	Granted
	NO _x	Present-2025	2015-2020	2015-2020	Granted
Matimba	SO ₂	Indefinitely	2015-2020	2020-2025	Granted
Matla	PM	Present-2025	2015-2020	2015-2020	Granted
	SO ₂	Indefinitely	2020-2025	2020-2025	Granted

	NOx	Present-2025	2015-2020	2015-2020	Granted
Medupi	SO2	Before FGD (latest 2026)	2015-2020	2020-2025	Granted
Tutuka	PM	Present-2024	2015-2020	2015-2020 (in stages)	Granted according to refurbishment schedule
	SO2	Indefinitely	2015-2020	2020-2025	Granted
	NOx	Present-2025	2015-2020	2015-2018	Granted

4. In many cases, Eskom did not specify whether they were applying for 2015 MES or 2020 MES postponements. In such cases, you seem to have assumed that Eskom applied for a postponement of the 2020 MES if the limit for which postponement was sought was less than the 2015 MES. For example, in relation to the Majuba Station application for postponement of the SO2 MES, your decision is as follows: *“Our finding is that the facility is operating in compliance with the minimum emission standards for existing plant. Therefore, postponement of compliance with the minimum emission standard for new plant is granted from 1 April 2020 to 31 March 2025 with a limit of 3200mg/Nm³ during this period due to the expected emissions, which are based on the sulphur content of the fuel.”* This should be clarified.

Discrepancies in the postponement limits

5. There are several cases in which the emission limits requested by Eskom differ from those that were granted, and/or where Eskom’s request is recorded differently in the application and the decision. Nevertheless, in some cases, it is recorded that the application was granted. This has created confusion as to whether or not the application was granted. These examples are set out below.

Table 2: Discrepancies in the postponement limits stated in different parts of the postponement process

Power station	Pollutant	Requested limit as per application	Requested limit as per decision	Decision	Granted/declined as per decision
Camden	NOx	1700	1700	1300	Granted
Duvha	SO2	2600	2600	2300	Granted
Grootvlei	PM	350	350	200	Granted
	SO2	3800	3800	3500	Granted
	NOx	1200	1200	1100	Granted
Hendrina	SO2	3800	3800	3200	Granted
	NOx	1300	1300	1200	Granted
Kendal	SO2	2800	2800	2600	Granted
Komati	SO2	3200	3200	2600	Granted
	NOx	1400	1400	1300	Granted
Kriel	PM	350	350	125	Granted
Lethabo	SO2	3100	2800	2500	Granted
Matimba	SO2	3700	3700	3500	Granted
Matla	SO2	2900	2900	2600	Granted
	NOx	1400	1200	1200	Granted
Medupi	SO2	4000	4000	3500	Granted

6. Lethabo asked for an indefinite NOx limit of 1100 mg/Nm³ according to the original application. However, it is incorrectly recorded in the decision letter that Eskom sought to comply with the MES. This is clearly an error. Lethabo, in fact, received a five year postponement of the NOx new plant MES.
7. Postponement has been granted for PM at Matla for Units 1-4, but not Units 5-6. Nevertheless, the application is recorded as “granted” in the table. This is only partially correct.

Lack of commencement dates for MES

8. There are several cases in which the postponement has been granted in stages, with decreasing limits. However, in relation to some power stations, it is not clear when the new plant MES will apply. For the following power stations, please confirm when the MES for new plants is to apply:

Table 3: Power stations for which the commencement dates of the MES are not explicitly stated

Power station	Pollutant	2015	2017	2018	2019	2020
Grootvlei	PM	350	200	100		
Lethabo	PM	100				
Tutuka	PM	350			200	100

Confusion as to postponements granted

9. There are several places in the MES decisions where Eskom's application for postponement of the 2020 MES has not been addressed, as listed below. It is assumed that, in these cases, the postponement has not been granted for 2020, but this should be clarified.

Table 4: Power stations for which no clear statement is made on the 2020 MES postponement decision

Power station	2020 MES postponement not addressed
Camden	NOx
Duvha	PM SO2
Grootvlei	PM
Hendrina	NOx
Komati	NOx
Kriel	NOx
Lethabo	PM
Majuba	NOx
Matla	PM NOx
Tutuka	PM NOx

Summary of the NAQO letters responding to Eskom's applications for postponement of the MES

10. The following is a summary of our understanding of the meaning of the decision letters that we obtained from Eskom. Please confirm if this is incorrect in any respect.

Postponement applications in respect of the 2015 standard for PM of 100mg/Nm³

11. Of the five applications for postponement of the 2015 PM standard, only one (Duhva) was refused, one (Kriel) was granted - with a limit of 125mg/Nm³, two (Grootvlei and Tutuka) were granted, conditional on a schedule for coming into compliance within the five year period to 31 March 2020, and one (Matla) was partially granted in respect of four of the six units - with a limit of 200mg/Nm³.

Postponement applications in respect of the 2020 standard for PM of 50mg/Nm³

12. Eskom applied for postponement of the 2020 PM standard in respect of six plants. For Camden, Eskom requested an alternative limit of 75mg/Nm³, and for Matimba, an alternative limit of 100mg/Nm³, but postponement was not granted for these two plants on the basis that they are already operating in compliance with the MES for new plants.
13. For Kendal, Komati and Lethabo, Eskom applied for postponement with an 'alternative limit' of 100mg/Nm³, but your decision is that *"postponement applications for compliance with PM limits beyond 2020 have not been considered because the national ambient air quality standards have become stricter on 01 January 2015."*
14. In the case of Kriel, Eskom applied for postponement of the MES through to 31 March 2025. In response to this, it is not clear whether you have implicitly granted postponement of the 2020 MES by stating that, *"nonetheless, the facility's refurbishment schedule has been noted and it is recorded that compliance with the 2020 standards is scheduled to take place in 2025."*
15. Thus, you have "not considered" postponement of the 2020 PM MES in respect of three plants that explicitly requested such postponements (Kendal, Komati and Lethabo), but appear to have implicitly granted a postponement for a fourth plant, Kriel. This needs to be clarified as soon as possible please.

Postponement applications in respect of the MES for SO₂

16. In 11 of its 13 (excluding Medupi) applications for postponement of the SO₂ MES, Eskom does not explicitly distinguish between a request for postponement of the 2015 MES and the 2020 MES, but simply requests alternative "Emission Limits". For example, for Camden, Eskom's postponement request is contained in Table 3 of its application:

3 REQUESTED EMISSION LIMITS

The current limits listed in Table 3 are as in Camden's APPA Registration Certificate 787/3. The alternative emission limits that are requested for Camden during normal operating conditions, are:

Table 3: Current and requested emission limits for Camden.

	Current Limit (from APPA Registration Certificate)		Requested Emission Limits ^{***}	
	Limit value	Averaging period	Limit value	Averaging period
Particulate Matter	75*150**	Hourly	75	Daily
Sulphur dioxide	4000	Monthly	4000	Daily
Nitrogen oxides	1700	Monthly	1700	Daily

*May be exceeded for 60 hours/stack/month

**Cap limit: Station should take a load loss or shut down to avoid exceeding the cap limit

***The requested interim emission limits above are in mg/Nm³ at 273 K, 101.3 kPa, dry and 10% O₂.

Figure 1: Eskom's MES postponement application for Camden

17. In the cases of Camden, Grootvlei, Hendrina and Matimba, Eskom requested alternative SO₂ emission limits greater than 3500mg/Nm³. These requests were refused in respect of the 'existing plant' standards on the basis that plant data showed that these plants currently already comply with the 2015 standard of 3500mg/Nm³.
18. In the case of Duvha, Eskom requested a limit of 2600mg/Nm³. The decision shows that 2300mg/Nm³ was granted, without stating that the requested amount was only granted partly and not wholly.

19. In respect of Arnot, Duhva, Kendal, Komati, Lethabo, Matla and Tutuka, Eskom requested alternative emission limits lower than the 2015 limit of 3500mg/Nm³ without explicitly requesting postponement of the 2020 standard. For example, for Arnot, the application for postponement reads as follows:

3 REQUESTED EMISSION LIMITS

The current limits in Table 3 are as in Arnot's APPA Registration Certificate 241/6. The alternative emission limits that are requested for Arnot during normal operating conditions, are:

Table 3: Current and requested interim limits for Arnot.

	Current Limit (from APPA Registration Certificate)		Requested Emission Limits***	
	Limit value	Averaging period	Limit value	Averaging period
Particulate matter	50*100**	Hourly	50	Daily
Sulphur dioxide	4000	Monthly	2500	Daily
Nitrogen oxides	1700	Monthly	1200	Daily

*May be exceeded for 90 hours per stack per month

**Cap limit: Station should shut down or take a load loss to avoid exceeding the cap limit

***The requested interim emission limits above are in mg/Nm³ at 273 K, 101.3 kPa, dry and 10% O₂.

Figure 2: Eskom's MES postponement application for Arnot

20. Your decision for Arnot was stated in the following terms: *“Our finding is that it is possible for the facility to comply with the minimum emission standards for existing plant. Therefore postponement of compliance with the minimum emission standard for new plant is granted from 1 April 2020 to 31 March 2025 with a limit of 2500mg/Nm³ during this period due to the expected emissions, which are based on the sulphur content of the fuel.”* It therefore appears that you granted a five year postponement of the 2020 SO₂ MES of 500mg/Nm³, accepting a limit value of 2500mg/Nm³ for the period to 31 March 2025, even though the application did not explicitly request such a postponement. At best, the wording of the application implied an application for postponement of the 2020 standard for an “interim” period.
21. The postponement applications for Duhva, Komati, Lethabo, Matla and Tutuka were similarly dealt with, with emission limits during the period 01 April 2020 to 31 March 2025 set at Eskom's “requested interim limits” or slightly lower than requested values, in the range 2600-3400mg/Nm³.
22. Only in the cases of Kriel and Majuba, does Eskom explicitly request alternative emission limits “from now until decommissioning”, that is for the period beyond 2020 when the ‘new plant’ SO₂ MES is applicable. For these plants, the limit values granted (2800mg/Nm³ and 3200mg/Nm³ respectively) were granted ‘until decommissioning’. According to the decisions, the expected decommissioning dates for these two plants, based on a 50 year life, are respectively 2030 to 2034 and 2046-2051. Since the lives of these plants may be extended to 60 years, the decommissioning dates may be pushed out to 2040-2044 and 2056-2061. Kindly clarify whether these plants have effectively been granted exemptions from compliance with the 2020 MES for SO₂.
23. Only in the cases of Kendal and Matimba was postponement of the 2020 MES for SO₂ granted explicitly for a period of five years only: *“the facility is required to achieve 500mg/Nm³ on 01 April 2025 due to its massive contribution to the SO₂ pollution load in the Highveld Priority Area as well as the fact that decommissioning of the station is not planned.”* The expected decommissioning dates for Kendal and Matimba, based on a 50 year life, are respectively 2038-2043 and 2037-2041.
24. In all other postponement applications, you appear to have granted open-ended postponements of the 2020 SO₂ MES, either by stating that the alternate emission limit granted was applicable ‘until decommissioning’, or implicitly, by omitting any reference to a date by which compliance must be achieved.

Postponement applications in respect of the MES for NOx

25. In respect of the 2015 NOx MES, Eskom applied for postponement of the standard against 'alternate emission limits' for eight of the 13 plants. The NAQO refused one of the eight applications on the basis that the plant already meets the existing plant standard, and granted postponement for seven of these plants, with emission limits equal to or somewhat lower (in three of seven cases) than the requested alternative limit.
26. In respect of the 2020 NOx MES, Eskom applied for postponement of the standard against "alternate emission limits" for nine of the 13 plants. You granted five of the postponement applications and did not respond to four of the applications.
27. We look forward to your response as soon as possible so that we can advise our clients accordingly.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

Robyn Hugo

Attorney and Programme Head: Pollution & Climate Change

Direct email: rhugo@cer.org.za