

The HoD: Electricity Licensing and Compliance Department

National Energy Regulator of South Africa

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By email: siphiwe.khumalo@nersa.org.za

Tamai Hore

Senior Engineer: Generation Licensing

National Energy Regulator of South Africa

By email: tamai.hore@nersa.org.za

Our ref: CER 12.4
29 November 2016

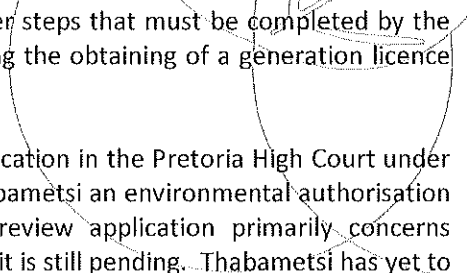
URGENT

Dear Sirs

APPLICATION FOR A LICENCE TO GENERATE ELECTRICITY – THABAMETSI PROPOSED IPP POWER STATION

1. We act for Earthlife Africa Johannesburg ("our client"). We write to you with regard to the licence application lodged with the National Energy Regulator of South Africa (NERSA) to operate the proposed 557.3 MW Thabametsi coal-fired power plant ("Thabametsi"), and the notification to stakeholders in terms of section 11 of the Electricity Regulation Act, 2006 (ERA) ("the notification").
2. The notification was forwarded to us by the environmental assessment practitioners, Savannah Environmental (Pty) Ltd, on 25 November 2016.
3. Although Thabametsi has obtained an environmental authorisation, and has been appointed a preferred bidder under the first bid window of the Coal Baseload Independent Power Producer Procurement Programme (CBIPPPP), it is still required to conduct several environmental processes; for instance, it must:
 - 3.1. obtain a water use licence in terms of the National Water Act, 1998 - our client is in the process of submitting comments on this application;
 - 3.2. conduct a climate change and palaeontological impact assessment as directed by the Minister in her decision on our client's appeal of the environmental authorisation; and
 - 3.3. obtain an atmospheric emission licence (AEL) in terms of the National Environmental Management: Air Quality Act, 2004 – our client will also submit comments on this application once it is submitted.

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4. The Request for Proposals (RFP) for the CBIPPPP sets out numerous other steps that must be completed by the applicant in order for it to reach commercial and financial close, including the obtaining of a generation licence from NERSA.
 5. However, we point out that, in August 2016, our client launched an application in the Pretoria High Court under case number 65662/16, to review and set aside the decision to grant Thabametsi an environmental authorisation for the proposed construction of its coal-fired power station. This review application primarily concerns Thabametsi's failure to conduct a climate change impact assessment, and it is still pending. Thabametsi has yet to submit its answering papers. The court papers can be accessed [here](#) at the bottom of the page under: 'Earthlife Africa Johannesburg v Minister of Environmental Affairs, Department of Environmental Affairs and Thabametsi Power Project (Pty) Ltd'. This litigation, as well as the numerous pending application processes for the Thabametsi project, are relevant to Thabametsi's requested licence to generate electricity and Thabametsi's ability to reach commercial and financial close under the RFP.
 6. Our client has numerous concerns and objections in relation to the proposed power station project and the impacts that it will have from a health; climate change; environmental and socio-economic perspective, and we require an opportunity to fully consider and advise our client, and to take expert advice on the Thabametsi application for a generation licence. Other interested and affected persons and communities, particularly those who will be most directly affected by Thabametsi, also require a fair, reasonable and lawful opportunity to make submissions. The public participation process cannot be rushed, and a failure to provide an adequate opportunity, as submitted above, would contravene the Promotion of Administrative Justice Act, 2000.
 7. We note that the notification provides only 14 days for the lodging of written objections to NERSA in respect of the application. This is not sufficient time to consider the application documents, given the technical nature of the application and its substantial volume, as well as the potential significant impacts that this application and licence will have for the public and for the environment (including impacts on water, land, air and climate). We submit that the public should be afforded until at least 10 January 2017 to submit objections, and we request that an extension of this deadline be granted. In this regard, we make this request on the basis that our offices only open on 9 January 2016, and none of the attorneys in the relevant programme is in the office on 9 January 2017.
 8. Should you be amenable to the granting of the requested extension, we ask that you please confirm this in writing by 1 December 2016 and instruct Thabametsi to amend the notification to provide for the new extended deadline.
 9. We also request that NERSA call for public hearings on this application, inviting the applicant and interested and affected parties to make oral submissions on the application, from February 2017.
 10. We look forward to hearing from you.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



Nicole Loser
Attorney

Direct email: nloser@cer.org.za



Nicole Loser

From: Tamai Hore <Tamai.Hore@nersa.org.za>
Sent: 02 December 2016 01:56 PM
To: Nicole Loser
Subject: RE: Khanyisa NERSA licence

Good day

The extension to 10 January 2017 was granted.

For ACWA power, they will also advertise for 14 days as per NERSA procedures but should you also want extension, you may request it and I do not see any reason why it should not be granted. Note that ACWA was already asked to advertise and might have already done it by now.

Regards
Tamai

From: Nicole Loser [mailto:nloser@cer.org.za]
Sent: 02 December 2016 11:44
To: Tamai Hore <Tamai.Hore@nersa.org.za>
Cc: Robyn Hugo <rhugo@cer.org.za>
Subject: RE: Khanyisa NERSA licence

Hi Tamai

Any news on our request for an extension regarding the comment period for Tabametsi's NERSA licence application, to 10 January 2017?

In relation to Khanyisa, we are advised that ACWA Power will advertise the application for comment, "in due course". Please can we request, in advance, that ACWA be instructed to afford a period of at least 30 days to the public for consideration and comment on the application, and that such comment period does not coincide with the festive season – this would not be fair or reasonable.

We look forward to hearing from you.

Kind regards

Nicole Löser
Attorney
Centre for Environmental Rights NPC
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Nicole Loser

From: Tamai Hore <Tamai.Hore@nersa.org.za>
Sent: 08 December 2016 01:24 PM
To: Robyn Hugo
Cc: Nicole Loser
Subject: RE: Public hearings for NERSA licence applications

Good day

They are open to anyone to attend or present. interested parties will be required to register with NERSA and indicate whether they will be attending only or presenting as well. Details will follow once we receive all comments and analysed them.

Regards
Tamai

From: Robyn Hugo [mailto:rhugo@cer.org.za]
Sent: 05 December 2016 14:55
To: Tamai Hore <Tamai.Hore@nersa.org.za>
Cc: Nicole Loser <nloser@cer.org.za>
Subject: Public hearings for NERSA licence applications

Good afternoon Tamai

We haven't been involved in NERSA hearings before and are interested to hear about the licence application public hearings please. What format do these take? Are they open to everyone – to attend and to present – or only those who have made written submissions?

Thanks very much

Kind regards

Robyn Hugo
Attorney and Programme Head: Pollution & Climate Change
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Centre for
Environmental Rights

Advancing Environmental Rights in South Africa

Report violations of environmental rights to the 24-hour Environmental Crimes & Incidents Hotline on **0800 205 005**. More reports of environmental violations assist in justifying more investment in more inspectors, and more enforcement of environmental laws. Numbers matter! Take the time to report violations, even if you have done so elsewhere. For more