

Centre for Environmental Rights

Advancing Environmental Rights in South Africa



Ms Karen Breytenbach
Head of IPP Office
Department of Energy
IPP Projects
By email: karen.breytenbach@ipp-projects.co.za

Copied to:

Mr Adam Gunn
Gunn Attorneys
15 Glenhove road
Sandton
By email: adam@gunnattorneys.co.za

Honourable Minister Joemat-Pettersson
Minister of Energy
192 Visagie Street
Pretoria
By email: Olga.Ockhuis@energy.gov.za

DEA ref: 14/12/16/3/3/3/40
Our ref: RH/NL
18 October 2016

Dear Madam

THABAMETSI POWER COMPANY (PTY) LIMITED AS A PREFERRED BIDDER UNDER THE COAL BASELOAD IPP PROCUREMENT PROGRAMME

1. We act for Earthlife Africa Johannesburg (ELA), ("our client").
2. We write to you with reference to the proposed Thabametsi independent power producer (IPP) coal-fired power station, to be established near Lephalale, Limpopo, by Thabametsi Power Company (Pty) Limited ("Thabametsi"), and we refer to the Department of Energy's ("the Department") decision to appoint Thabametsi a preferred bidder under the first bid window for the Coal Baseload Independent Power Producer

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Procurement Programme (CBIPPPP), which decision was announced by the Minister of Energy on 10 October 2016.

3. We refer to our letter to you of last year, 17 August 2015 (attached hereto), which stated, *inter alia*, the following:
 - 3.1. our client had instituted an appeal of the environmental authorisation granted on 25 February 2015 (and amended on 17 March 2015) to Thabametsi Power Project (Pty) Limited (previously named Newshelf 1282 (Pty) Ltd);
 - 3.2. we requested that we be placed on the Department's list of relevant stakeholders and that we be kept updated in relation to the coal baseload IPP bid process; including that we be advised of all bid submissions and the announcement of preferred bidders;
 - 3.3. we submitted that, to the extent that the appeal is still pending when Thabametsi's bid response is considered, that Thabametsi's bid response is insufficient to pass the threshold legal qualification criteria;
 - 3.4. we listed the grounds on which ELA's appeal of the authorisation was based and referred to the requirements of Volume 2 Part 1, section 4.1.3 of the Legal Qualification Criteria of the CBIPPPP Request for Proposals (RFP) – referred to below;
 - 3.5. it was clear from the nature and scope of our client's appeal that the appeal certainly goes to the heart of the authorisation granted and will affect the key activities required for the Thabametsi project; and
 - 3.6. we requested that the Department exercise its discretion to regard Thabametsi's bid response as failing to meet the legal qualification criteria, and excluding it from consideration as a bidder.
4. In March 2016, the Minister of Environmental Affairs made a decision to dismiss our client's appeal, yet also required Thabametsi to conduct climate change and palaeontological impact assessments within 6 months of the decision.
5. On 28 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 and environmental authorisation for the proposed construction of its coal-fired power station.
6. This review application primarily concerns Thabametsi's failure to conduct a climate change impact assessment, a matter which goes to the heart of the environmental authorisation.
7. In terms of clause 4.1.3 of the Legal Qualification Criteria (Vol 2 of the Request for Proposals) – which provision was also referred to in our letter to you of August 2015, addressed above - Thabametsi was required to bring any relevant High Court review applications to the attention of the Department and to make appropriate submissions in this regard. Clause 4.1.3 provides: *"In respect of those key Environmental Consents which are subject to any appeal or High Court review proceedings, or in respect of which the relevant appeal or review periods have not expired at the date of Bid Submission, the Department may, in its sole discretion, consider the Bidder's Bid Response as being insufficient to pass the threshold requirement for this Qualification Criterion. In considering this the Department will pay particular regard to whether the Bidder has demonstrated that such an appeal or review or anticipated appeal or review does not go to the heart of the relevant key Environmental Consents or does not affect the key activities required for the Project, and whether the Bidder has demonstrated that it is capable of timeous resolution."*
8. In this light, we request clarity on several matters:
 - 8.1. First, did Thabametsi inform the Department of our client's application to review and set aside the environmental authorisation?
 - 8.2. Second, did Thabametsi make submissions to the Department on why its bid proposal should be accepted despite the pending review application? If so, please furnish us with a copy of these submissions.

8.3. Third, what were the Department's reasons for appointing Thabametsi as a preferred bidder in the face of this pending review application?

9. We attach an electronic copy of the notice of motion and founding affidavit in the application to review and set aside Thabametsi's environmental authorisation. If required, we will gladly furnish you with a copy of the annexures.

10. We look forward to your urgent response.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

Robyn Hugo

Attorney & Programme Head: Pollution and Climate Change Programme

Direct email: rhugo@cer.org.za

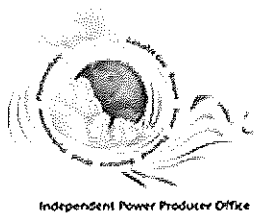
Nicole Loser

From: Karen Breytenbach <karen.breytenbach@ipp-projects.co.za>
Sent: 18 November 2016 10:54 AM
To: Nicole Loser
Cc: Olga.Ockhuis@energy.gov.za; Robyn Hugo; Kate.Dire@energy.gov.za; Karen Breytenbach
Subject: RE: Thabametsi Power Company (Pty) Limited

Dear Nicole

On behalf of Ms Breytenbach I hereby acknowledge receipt of your mail.
We will respond soon.

Kind regards



Beverley Roos

Head IPP Office

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From: Nicole Loser [mailto:nloser@cer.org.za]
Sent: 18 November 2016 10:32 AM
To: Karen Breytenbach <karen.breytenbach@ipp-projects.co.za>
Cc: Olga.Ockhuis@energy.gov.za; Robyn Hugo <rhugo@cer.org.za>; Kate.Dire@energy.gov.za
Subject: RE: Thabametsi Power Company (Pty) Limited

Good day Karen

Are you able to update us on this matter? When do you expect you will be in a position to respond?

We look forward to hearing from you.

Kind regards

Nicole Löser

Attorney

Centre for Environmental Rights NPC

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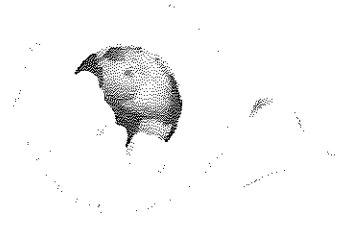
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To: **Robyn Hugo**
rhugo@cer.org.za

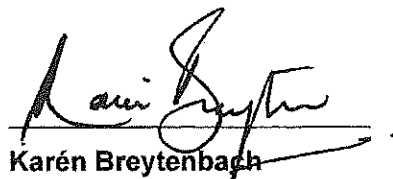
PER EMAIL

Dear Ms Hugo,

RE: THABAMETSI POWER COMPANY (PTY) LIMITED AS A PREFERRED BIDDER UNDER THE COAL BASELOAD IPP PROCUREMENT PROGRAMME

1. We acknowledge receipt of your letter dated 18 October 2016 and the application launched by your client under case number 65662/16.
2. The Department is currently considering its position and therefore a response to your questions is premature at this stage.

Yours sincerely,



Karén Breytenbach

Head: IPP Office

Date: 27/10/2016.



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