



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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Acting Director

Nkangala District Municipality

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Our ref: CER54.2RH/Khanyisa

13 November 2017

Dear Sirs

NOTICE OF PROVISIONAL APPEAL IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT 32 of 2000 ("THE ACT") IN RESPECT OF THE TRANSFER OF PROVISIONAL ATMOSPHERIC EMISSION LICENCE (LICENCE NO. 17/4/AEL/MP312/14/20) FROM ANGLO OPERATIONS (PTY) (LTD) TO ACWA POWER KHANYISA THERMAL POWER STATION RF (PTY) LTD FOR THE PROPOSED INDEPENDENT POWER PRODUCER KHANYISA POWER STATION (PROJECT NO. 111415) NEAR EMALAHLENI, MPUMULANGA PROVINCE

1. We write to you on behalf of our client, groundWork¹ ("our client"), a registered interested and affected party (I&AP).

¹ A non-profit environmental justice service and developmental organisation aimed at improving the quality of life and vulnerable people in South Africa (and increasingly in Southern Africa), through assisting civil society to have a greater impact on environmental governance,

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2. Kindly find enclosed herewith, our client's provisional appeal, together with reasons for the appeal in respect of the transfer of the provisional atmospheric emission licence (PAEL) for the proposed Khanyisa coal-fired power station ("Khanyisa") from Anglo Operations (Pty) Ltd ("Anglo") to ACWA Power Khanyisa Thermal Power Station RF (Pty) Ltd ("ACWA"), of which notice was given to our client on 23 October 2017.
3. We note that the initial PAEL granted to Anglo on 11 September 2015 was issued by Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs (MDARDLEA) as the Licensing Authority (LA), and the subsequent transfer was issued on 18 October 2017 by the Municipal Manager of the Nkangala District Municipality (NDM), as the subsequent LA.
4. Assuming that the correct LA in this instance was indeed the NDM, since the Municipal Manager authorised the transfer in this instance (which is yet to be confirmed), the correct appeal authority, in terms of section 62(4)(b) of the Act is the executive mayor or the executive committee. If the municipality does not have an executive committee or executive mayor, the council of the municipality is the appeal authority. In terms of section 62(4) read with section 62(5) of the Act, the municipal manager must submit the appeal to the correct appeal authority, and the appeal authority is required to commence with the appeal within 6 weeks and decide it within a reasonable period.
5. Kindly direct the appeal to the correct appeal authority, and provide us with their contact details. Please also keep us informed of the progress of the appeal.
6. Please note that, on 6 November 2017, our client requested full and substantive reasons within 90 days, for the transfer, variation, and details of the delegation of powers of the PAEL, in terms of sections 33(1) and 33(2) of the Constitution of the Republic of South Africa, read together with section 5 of the Promotion of Administrative Justice Act, 2000 (PAJA). A copy of this correspondence is included in the appeal and attached hereto. Our client therefore reserves its right to supplement the appeal after the expiry of 90 days (i.e 4 February 2017) or after the requested information is received (whichever occurs sooner).
7. Our client furthermore reserves its right to appeal the PAEL in its entirety, on the basis of the notification and objections submitted on 14 March 2017 and 22 May 2017 (copies of the objections are included in the appeal and are attached) and/or should it become evident that a new PAEL was issued and/or varied without following the prescribed procedures.
8. Our client's rights are reserved in full.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



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