



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

**Chris Forlee**

**Chief Executive Officer**

National Energy Regulator of South Africa

Kulawula House

526 Madiba Street

Arcadia

Pretoria

By email: [Christopher.Forlee@nersa.org.za](mailto:Christopher.Forlee@nersa.org.za)

**Dr Bianka Belinska**

**Acting Executive Manager**

National Energy Regulator of South Africa

By email: [Bianka.Belinska@nersa.org.za](mailto:Bianka.Belinska@nersa.org.za)

**Copied to:**

**Dennis Seemela**

**The HoD: Electricity Licensing and Compliance Department**

National Energy Regulator of South Africa

By email: [Dennis.Seemela@nersa.org.za](mailto:Dennis.Seemela@nersa.org.za)

**Tamai Hore**

**Senior Engineer: Generation Licensing**

National Energy Regulator of South Africa

By email: [tamai.hore@nersa.org.za](mailto:tamai.hore@nersa.org.za)

Our ref: CER12.4 & 54.3 NL/RH/MMK

16 February 2018

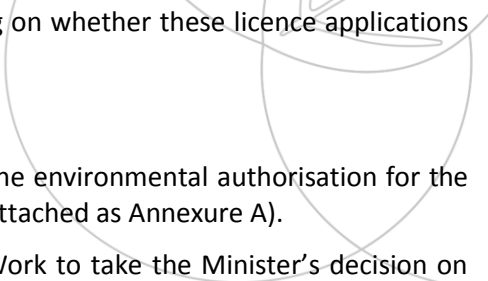
**URGENT**

Dear Sirs

**PUBLIC HEARINGS IN RESPECT OF THE GENERATION LICENCE APPLICATIONS FOR THE PROPOSED KHANYISA AND THABAMETSI INDEPENDENT POWER PRODUCER COAL-FIRED POWER STATIONS**

- 1 We act for [Earthlife Africa Johannesburg](#) ("Earthlife") and [groundWork](#).
- 2 We refer to our previous correspondence and an email from Tamai Hore of 12 February 2018, wherein it was advised that the National Energy Regulator of South Africa (NERSA) is planning to have a public hearing for the two generation licence applications for the proposed Thabametsi and Khanyisa independent power producer (IPP) coal-fired power stations on 27 March 2018 (subject to confirmation from the board).

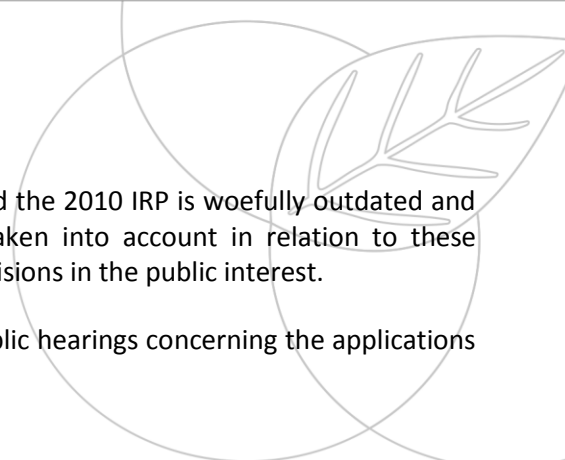
Cape Town: 2<sup>nd</sup> Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa  
Johannesburg: 9th Floor, Southpoint CNR, 87 De Korte Street, Braamfontein, 2001, South Africa  
Tel 021 447 1647, Fax 086 730 9098  
Email [info@cer.org.za](mailto:info@cer.org.za), [www.cer.org.za](http://www.cer.org.za)

- 
- 3 We write to advise of certain new developments which have a bearing on whether these licence applications are ripe for public hearing.
- 4 In respect of Thabametsi:
- 4.1 On 30 January 2018, the Minister made a decision to uphold the environmental authorisation for the proposed Thabametsi coal-fired power station (the decision is attached as Annexure A).
- 4.2 We have been instructed by our clients Earthlife and groundWork to take the Minister's decision on review. We will therefore be instituting proceedings to challenge the decision to uphold the environmental authorisation (despite the significant climate impacts). We have notified the Minister and Thabametsi of this intention in a letter dated 7 February 2018, attached to this letter as Annexure B.<sup>1</sup>
- 4.3 We repeat that Thabametsi does not yet have a valid water use licence (WUL). As indicated in our previous correspondence, Thabametsi submitted a new application and an integrated waste and water management plan (IWWMP), which remain open for comment until 6 March 2018.
- 4.4 We further repeat that, to the best of our knowledge, Thabametsi has not yet applied for an atmospheric emission licence (AEL).
- 5 In respect of Khanyisa:
- 5.1 The application to review and set aside Khanyisa's environmental authorisation remains pending, under case number 61561/17.<sup>2</sup> The signed notice of motion and founding affidavit were previously made available to you. We are still waiting for the Minister of Environmental Affairs to dispatch the record of proceedings; whereafter, we will supplement our founding papers.
- 5.2 To our knowledge, Khanyisa has still not obtained an integrated WUL. We reiterate that, should the IWUL have been granted, our client intends to appeal it.
- 5.3 The validity of Khanyisa's provisional AEL is disputed and the transfer of the AEL is subject to an appeal in terms of the Municipal Systems Act, 2000.
- 5.4 In your letter of 14 November 2017, you advised that NERSA cannot proceed with Khanyisa's application while the WUL application is pending. It appears that circumstances have not changed.
- 6 We submit that, public hearing notwithstanding, the above litigation and the outstanding licences will limit NERSA's ability to:
- 6.1 ensure that any decision will be consistent with the Constitution and all applicable laws and in the public interest, as required in terms of s10(1)(a) and s10(1)(b) of the National Energy Regulator Act 40 of 2004 (NERA); and
- 6.2 ascertain the extent to which Thabametsi and Khanyisa are able "*to comply with applicable labour, health, safety and environmental legislation, subordinate legislation and such other requirements as may be applicable*", as required in terms of s10(2)(e) of the Electricity Regulation Act, 4 of 2006 (ERA).
- 7 We further note that the new Integrated Resource Plan for Electricity (IRP) has not yet been promulgated and uncertainty remains over when it will be published:
- 7.1 An applicant is required, in terms of section 10(2)(g) of the ERA, to provide evidence to NERSA of compliance with any IRP applicable at that point in time, or provide reasons for any deviation for the approval of the Minister.

---

<sup>1</sup> The letter can also be accessed at <https://cer.org.za/wp-content/uploads/2018/02/CER-Letter-to-Thabametsi-Power-Company-Pty-Ltd-7-2-18.pdf>.

<sup>2</sup> The court papers can be accessed here <https://cer.org.za/programmes/pollution-climate-change/litigation/groundwork-acwa-power>.



- 7.2 The fact that the IRP is still in the process of being revised, and the 2010 IRP is woefully outdated and not reflective of South Africa's current reality, should be taken into account in relation to these applications, as this will also affect NERSA's ability to make decisions in the public interest.
- 8 In the circumstances, we request that NERSA should postpone the public hearings concerning the applications made by Thabametsi and Khanyisa pending:
  - 8.1 the promulgation of a revised IRP;
  - 8.2 the final determination of the pending court challenges against Thabametsi and Khanyisa; and
  - 8.3 the issuing of the outstanding licences to Thabametsi and Khanyisa.
- 9 We await to hear from you as soon as possible and by no later than **23 February 2018**.
- 10 Our clients' rights are fully reserved.

Yours faithfully  
**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

**Nicole Loser**  
**Attorney**  
Direct email: [nloser@cer.org.za](mailto:nloser@cer.org.za)