



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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

27 February 2018

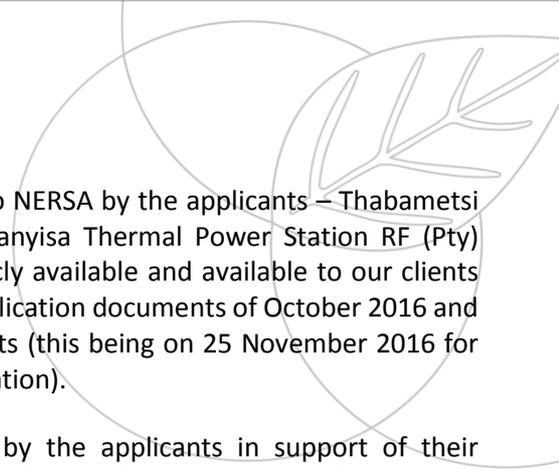
**URGENT**

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 As you are aware, we act for [Earthlife Africa Johannesburg](#) ("Earthlife") and [groundWork](#).
- 2 We refer to your 12 February 2018 email, wherein it was stated 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 NERSA board). We also refer to our letter of 16 February 2018 wherein we provided the reasons why we and our clients believe that it would be premature to proceed with the application hearings on 27 March 2018.

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- 3 We write to request that **all information and submissions** provided to NERSA by the applicants – Thabametsi Power Company (Pty) Limited (“Thabametsi”) and ACWA Power Khanyisa Thermal Power Station RF (Pty) Limited (“ACWA”) – to supplement their applications, be made publicly available and available to our clients immediately. This would include all information provided since the application documents of October 2016 and November 2016 respectively were made available to us and our clients (this being on 25 November 2016 for the Thabametsi application, and 26 January 2017 for the ACWA application).
- 4 Our clients require access to any additional information supplied by the applicants in support of their applications as this is relevant to, and necessary for, our clients to properly consider, comment, and participate in the licence applications for both Thabametsi and ACWA. You will appreciate that more than a year has lapsed since the applications were submitted and much of the information in the applications is likely to now be outdated.
- 5 We also place on record that our clients object to the redactions in ACWA’s application documents and the withholding of certain application documents by NERSA.
- 6 Furthermore, we still have not received a response to our letter of 16 February 2018, despite our request that you respond as a matter of **urgency and by 23 February 2018**. Mr Hore advises that NERSA will try and revert by the end of this week. We point out that we, and our clients, require sufficient time before the appointed hearing date in order to:
- 6.1 consult with community members and experts;
  - 6.2 consider any new information that forms part of both applications;
  - 6.3 supplement our clients’ written objections with any new and relevant information (given that these objections were made more than one year ago);
  - 6.4 prepare oral presentations; and
  - 6.5 arrange transport and accommodation for attendance at the hearings.
- 7 We submit that a period of **at least one month’s notice** before the hearings is required, to ensure that the process is sufficiently fair, particularly as NERSA’s intention is for 2 application hearings to take place on the same day (this means that double the time should be allowed for preparation).
- 8 A failure to provide our clients with reasonable and adequate time to address the above issues, will severely impact on the fairness of the process followed by NERSA and will violate our clients’ rights in terms of the Promotion of Administrative Justice Act, 2000 (PAJA) and in terms of the National Energy Regulator Act, 2005 (NERA). If we do not hear from you by **Friday 2 March 2018**, we submit that it would be irregular and procedurally unfair (in addition to premature - as submitted in our letter of 16 February 2018, where we set our reasons why the applications are not ripe for hearing) for the hearings to proceed on 27 March 2018.
- 9 We remind you that, according to NERA, every decision of NERSA must be taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to NERSA.<sup>1</sup>
- 10 NERSA has a duty to make all decisions available to the public, together with its reasons for a decision.<sup>2</sup> The members of NERSA have a duty to act in a justifiable and transparent manner whenever the exercise of their discretion is required,<sup>3</sup> and to act in the public interest.<sup>4</sup>

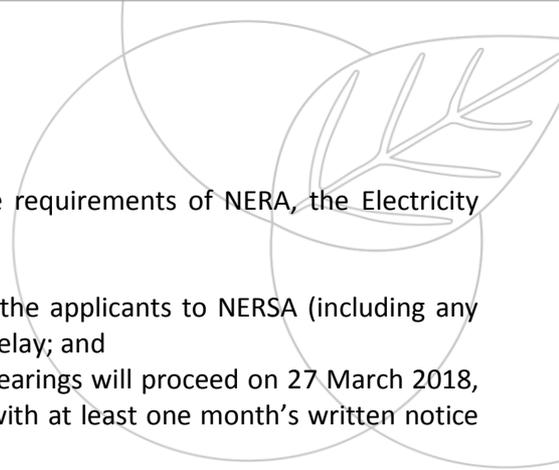
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<sup>1</sup> S10(3) NERA.

<sup>2</sup> S30(4), Electricity Regulation Act, 2006 and s10 NERA.

<sup>3</sup> S9(a) NERA.

<sup>4</sup> S9(f) NERA.

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- 11 In the interests of ensuring that the application processes meet the requirements of NERA, the Electricity Regulation Act, 2006 (ERA) and PAJA, we request that you:
- 11.1 provide us with all additional information made available by the applicants to NERSA (including any amendments to the original application documents), without delay; and
  - 11.2 confirm, by no later than Friday 2 March 2018, whether the hearings will proceed on 27 March 2018, failing which an alternative hearing date should be provided with at least one month's written notice given to our clients and the public.
- 12 Our clients reserve their rights to seek a postponement of the hearings in the event that any additional information (as requested) is not made available to our clients, or to request further time to prepare for the hearings in the event that the additional information provided is voluminous and/or new to our clients.
- 13 We await to hear from you as soon as possible and by no later than **2 March 2018**.
- 14 Our clients' rights are fully reserved.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

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**Attorney**

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