



# 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)

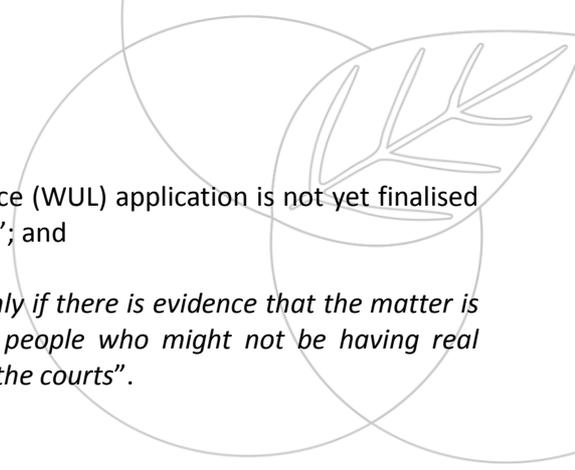
Our ref: NL/MK/RH  
5 December 2017

Dear Sirs

**RESPONSE TO NERSA LETTER OF 14 NOVEMBER 2017 – RELEVANT INFORMATION IN RELATION TO THABAMETSI AND KHANYISA IPP POWER STATION PROJECTS**

1. As you are aware we act for [Earthlife Africa Johannesburg](#) (“Earthlife”) and [groundWork](#), in relation to applications to the National Energy Regulator of South Africa (NERSA) for licences to generate electricity in respect of the 2 preferred bidders under the Coal Baseload Independent Power Producer (IPP) Procurement Programme – the proposed Thabametsi and Khanyisa coal-fired power stations respectively.
2. We refer to your letter of 14 November 2017, and wish to respond to the following points made in the letter:

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)

- 
- 2.1. that, in respect of the Khanyisa application, the water use licence (WUL) application is not yet finalised and that “*NERSA can therefore not proceed with this application*”; and
  - 2.2. that NERSA “*will ... await for the court process to be finalised only if there is evidence that the matter is before the courts. This is to avoid prejudicing applicants by people who might not be having real intention to appeal the Environmental Authorisation decision to the courts*”.
3. In response we wish to point out the following:
- 3.1. similarly to Khanyisa – Thabametsi also has not yet been issued with a WUL, as such, Thabametsi’s NERSA licence application is presumably also on hold until its WUL is issued (in addition to the application being pended while the Minister’s decision on Thabametsi’s climate change impact assessment (CCIA) is awaited). Earthlife objected to Thabametsi’s WUL application in January 2017 – a copy of the objections is attached. If the WUL is issued, it is likely to be appealed on the same bases as the objections;
  - 3.2. there are other licences also outstanding and further licence challenges for both Khanyisa and Thabametsi, which will no doubt also influence the NERSA licence application process, for example:
    - 3.2.1. Thabametsi has yet to apply for an atmospheric emission licence (AEL) – which it is required to have in order to operate a coal-fired power station and to reach commercial and financial close; and
    - 3.2.2. Khanyisa’s provisional AEL was recently transferred and this transfer has been appealed by groundWork in terms of the Local Government Municipal Systems Act, 2000. A copy of the appeal is attached; and
  - 3.3. the Khanyisa review application has been instituted in the North Gauteng High Court. This case was issued in September 2017, under case number 61561/17, and ACWA Power Khanyisa Thermal Power Station RF (Pty) Ltd has given notice of its intention to oppose the court application. We are currently awaiting the record in terms of rule 53 of the Uniform Rules from the Minister and other government respondents in the case. There can therefore be no doubt as to our client’s “*intention to appeal the Environmental Authorisation decision to the courts*” as stated above. The signed notice of motion and founding affidavit – which can be accessed [here](#)<sup>1</sup> - should serve as adequate evidence that this matter is before the North Gauteng High Court. The matter will proceed on an opposed basis. Kindly advise, however, if you require further information.
4. In light of the above, kindly confirm:
- 4.1. whether NERSA will wait for Thabametsi’s WUL and AEL to be issued (in addition to the Minister’s decision on the CCIA) before deciding on Thabametsi’s NERSA licence application (bearing in mind that both the WUL and AEL are likely to be challenged by our client if either of these is granted); and
  - 4.2. whether NERSA will wait for the Khanyisa court process to be finalised, as well as the AEL transfer appeal to be finalised; and the WUL to be issued (bearing in mind that the WUL is also likely to be challenged by our client based on previous objections) before making a decision on Khanyisa’s licence application.
5. We await your response.

---

<sup>1</sup> See [https://cer.org.za/wp-content/uploads/2017/07/Khanyisa-Review\\_0001.pdf](https://cer.org.za/wp-content/uploads/2017/07/Khanyisa-Review_0001.pdf).

Yours faithfully  
**CENTRE FOR ENVIRONMENTAL RIGHTS**



per:

**Nicole Loser**  
**Attorney**

Direct email: [nloser@cer.org.za](mailto:nloser@cer.org.za)

