



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

## The HoD: Electricity Licensing and Compliance Department

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Our ref: RH/NL  
14 September 2017

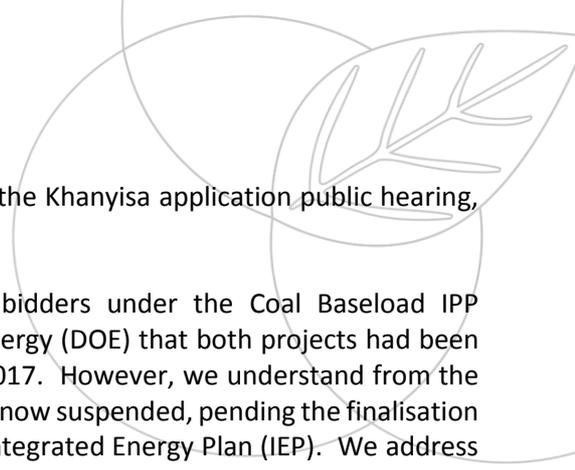
Dear Sirs

### UPDATE ON THE COAL INDEPENDENT POWER PRODUCER (IPP) COAL-FIRED POWER STATIONS – THABAMETSI & KHANYISA

1. We refer to our previous emails regarding the above proposed independent power producer (IPP) coal-fired power stations – Thabametsi (1200MW, proposed by Thabametsi Power Company (Pty) Ltd) and Khanyisa (600MW, proposed by ACWA Power Khanyisa Thermal Power Station RF (Pty) Limited).
2. We and our clients, [Earthlife Africa Johannesburg](#) (“Earthlife”) and [groundWork](#), have submitted objections in respect of both projects’ licence applications to the National Energy Regulator of South Africa (“NERSA”) for licences to generate electricity.
3. We are writing to update you and to bring to your attention the latest developments in relation to the Thabametsi and Khanyisa projects – as both projects have applications for NERSA licences pending - and also to request an update from NERSA on the status of these licence applications.
4. We refer to your latest email of 27 June 2017 in which you advised that:

*“The Thabametsi application is on hold pending the climatic studies and approval thereof by the Minister as per the court case won by yourselves. The Khanyisa project will go for public hearings soon. After NERSA ruled on confidentiality issues, Khanyisa submitted the information that was ruled to be not confidential on 8 June 2017. The public hearing is being organised and expect to be informed in a month or so. You will be notified 14 days before the public hearing.”*

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5. We have not received any further notification from you in relation to the Khanyisa application public hearing, nor in relation to either licence application generally.
  6. As you are aware, both Thabametsi and Khanyisa are preferred bidders under the Coal Baseload IPP Procurement Programme. We were advised by the Department of Energy (DOE) that both projects had been granted an extension of the financial close deadline to 3 November 2017. However, we understand from the Minister of Energy's 1 September 2017 statement,<sup>1</sup> that this deadline is now suspended, pending the finalisation of the updated Integrated Resource Plan for Electricity (IRP) and the Integrated Energy Plan (IEP). We address this statement below.
  7. In order to reach financial close, the projects must, among other things, have all necessary environmental authorisations and licences in place; including a licence from NERSA.
  8. In respect of Thabametsi, we bring the following to your attention:
    - 8.1. Thabametsi's final climate change impact assessment was made available for public comment in June 2017, and comments were submitted on 31 July 2017 by Earthlife and by Greenpeace Africa – a copy of both of these comments (without annexures) is attached for your records and information.<sup>2</sup> Thabametsi's environmental consultants responded to these comments on 18 August 2017.
    - 8.2. Thabametsi's climate change impact assessment revealed that the power station – due to the circulating fluidised bed (CFB) technology that it proposes to use – will have extremely high greenhouse gas (GHG) emissions and will be one of the highest GHG emitters in the country (only slightly better than Eskom's oldest and dirtiest stations). The assessment also made it clear that water availability poses a high risk to the feasibility of the power station over its anticipated lifespan and that there are no substantive measures that can be implemented to mitigate the plant's GHG emissions adequately.
    - 8.3. The Minister of Environmental Affairs must now again – having this time considered the climate change impact assessment and comments thereon - make her appeal decision in respect of Thabametsi's environmental authorisation. If the Minister allows Thabametsi to go ahead despite the evidence of the power station's significant climate change impacts, Earthlife will have no option but to consider a further legal challenge of this decision.
    - 8.4. Thabametsi has yet to apply for its atmospheric emission licence (AEL).
    - 8.5. The plant's water use licence (WUL) has not yet been issued – we, on behalf of Earthlife – objected to the WUL application in January 2017.
    - 8.6. As you are aware, Earthlife objected to the Thabametsi's NERSA licence application in December 2016.
  9. In respect of Khanyisa:
    - 9.1. We, on behalf of environmental justice organisation groundWork, have instituted judicial review proceedings in the North Gauteng High Court to challenge the power station's environmental authorisation on the same basis as for Thabametsi; i.e. that the Minister and the Department of

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<sup>1</sup> <http://www.energy.gov.za/files/media/pr/2017/IPP-Media%20Statement-01September2017.pdf>.

<sup>2</sup> The final climate change impact assessment summary report can be accessed at <https://cer.org.za/wp-content/uploads/2016/07/Thabametsi-Final-Summary-Report-Jun17.pdf> and the additional specialist reports are on the website at <https://cer.org.za/programmes/pollution-climate-change/key-correspondence> and can also be made available by the Centre for Environmental Rights on request.

Environmental Affairs (DEA) authorised the power station without an adequate assessment of the proposed plant's climate change impacts. The notice of motion and founding affidavit are attached and can be accessed [here](#).

- 9.2. ACWA proposes to use the same CFB technology as Thabametsi – which results in high emissions of the GHG nitrous oxide (N<sub>2</sub>O). As a result, we foresee similarly high GHG emissions for this plant, although ACWA has not conducted a climate change impact assessment for Khanyisa; nor have they indicated an intention to do so.
- 9.3. groundWork objected to Khanyisa's WUL application earlier this year and the validity of Khanyisa's provisional AEL is disputed by groundWork – a decision on this is awaited from the Limpopo Department of Economic Development and Tourism.
- 9.4. groundWork objected to Khanyisa's NERSA licence application in February 2017.
10. We, on behalf of groundWork, have instituted further court proceedings against another proposed coal IPP – the proposed 600MW KiPower coal-fired power station, to be developed by Kuyasa Mining (Pty) Ltd and KiPower (Pty) Ltd – also based on the project's failure to conduct a climate change impact assessment. This project did not submit a bid during the first bid window of the Coal Baseload IPP Procurement Programme, but intends to bid under a subsequent bid window – when/if there is one.<sup>3</sup>
11. As mentioned above, we trust you are aware of the Minister of Energy's Media Statement of 1 September 2017, in which it was advised that, *inter alia*, "all future [IPP] programmes [are] to be put on hold until a proper review is done and to allow the IEP [Integrated Energy Plan] and IRP [Integrated Resource Plan for Electricity] to be concluded that will give us indication of the capacity we need." We understand that this also applies to the coal IPPs, and therefore it is assumed that: (1) the signing of the power purchase agreements for Thabametsi and Khanyisa; and (2) the call for a subsequent bid window under Coal Baseload IPP Programme, are likely to be postponed until, at least, the revised IRP update and IEP are promulgated. Kindly advise if this is also your understanding of this statement.
12. In light of the above information, we request that you please advise what the status is of the NERSA licence applications for Thabametsi and Khanyisa. Kindly give us an indication of whether it is expected that these applications will be going ahead; and if so, when the public hearings for each project's NERSA licence application is likely to take place.
13. We await your response.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**



per:

**Nicole Loser**  
**Attorney**

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<sup>3</sup> The court papers in the KiPower court case as well as the recent appeal of KiPower's water use licence to the Water Tribunal can be accessed here [https://cer.org.za/programmes/pollution-climate-change/litigation/groundwork\\_kipower](https://cer.org.za/programmes/pollution-climate-change/litigation/groundwork_kipower).

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