



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

Mr Mbulelo Ncetezo

Executive Manager

National Energy Regulator of South Africa

By email: Mbulelo.ncetezo@nersa.co.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

Tamai Hore

Senior Engineer: Generation Licensing

National Energy Regulator of South Africa

By email: tamai.hore@nersa.org.za

Your ref: NERSA 658-1912
Our ref: Our ref: CER12.4 & 54.3 NL/RH/MMK
6 March 2018

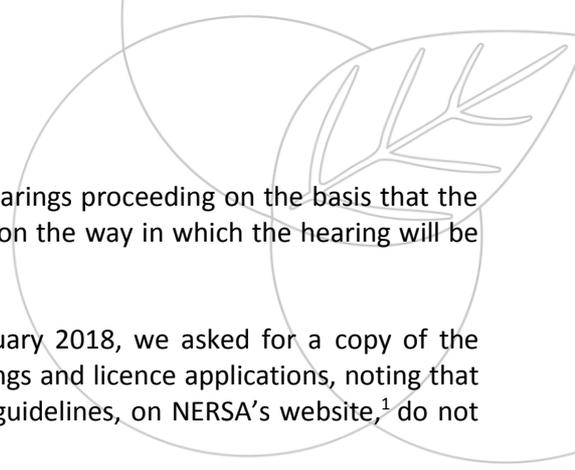
URGENT

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 refer to your email of 28 February 2018 and your letters of 2 March 2018, wherein you confirmed that the hearings for the above licence applications would be proceeding on 27 March 2018.

Cape Town: 2nd 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, www.cer.org.za

- 
2. While we stand by our clients' objection of 16 February 2018 to the hearings proceeding on the basis that the matter is not ripe for hearing, we write to request further information on the way in which the hearing will be conducted.
 3. In an email to Tamai Hore, and other NERSA employees, of 28 February 2018, we asked for a copy of the procedural/practice rules followed by NERSA in relation to public hearings and licence applications, noting that the National Energy Regulator of South Africa (NERSA) public hearing guidelines, on NERSA's website,¹ do not provide the details as to how the hearings are conducted.
 4. We asked you NERSA to advise, *inter alia*:
 - 4.1. how much time members of the public have to present objections;
 - 4.2. will the applicants (Thabametsi Power Company (Pty) Ltd and ACWA Power Khanyisa Thermal Power Station RF (Pty) Ltd have an opportunity to answer and will there be a chance for presenters/objectors to reply; and
 - 4.3. will the hearings for each application be conducted separately – i.e. one after the other and can each organisation make a submission in relation to each application?
 5. We have seen the public notice advertising the hearings – stating that they will be taking place at NERSA's offices in Pretoria from 09h00 to 14h00 on 27 March 2018, and inviting members of the public to present.
 6. Our clients are concerned that the hearings are not being held in the local areas where the power stations will be based, namely Lephalale and eMalahleni. This means that affected community members (apart from those who are informed of the hearings and able to fund or be funded to attend the hearings in Pretoria) are effectively excluded from the public participation process being run by NERSA. We strongly suggest that NERSA make the necessary arrangements to ensure that the public hearings are justifiable and transparent (which would include inclusive and fair) – as is required of NERSA under the National Energy Regulator Act, 2004 section 9 – and, as such, that public hearings also be held, in relation to the applications, in Lephalale (for Thabametsi) and eMalahleni (for Khanyisa). We submit that this is also necessary for reasonable, lawful, and procedurally fair administrative action, as required by the Promotion of Administrative Justice Act, 2000.
 7. Nevertheless we and our clients intend to participate in the hearings on 27 March (with our clients' rights fully reserved) and we therefore request that you provide us with the relevant details for the process to be followed, without delay.
 8. Do the NERSA offices have video conferencing facilities for more remotely-situated members of the public to participate and present?
 9. Please also advise whether there is an opportunity for our clients to submit supplementary written objections – given that more than one year has elapsed since the written objections to both Thabametsi and Khanyisa's objections were made. If yes, please advise when these written submissions must be submitted and if they can also be submitted **after** the hearings – this would allow us to address, in writing, any issues requiring clarification which may arise during the hearings. Kindly also provide us with copies of any additional submissions made (or to be made) by the applicants, Thabametsi and ACWA Power.
 10. We await your urgent response.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

¹ <http://www.nersa.org.za/Admin/Document/Editor/file/Guidelines%20on%20Public%20Consultation.pdf>.

per: 

Nicole Loser
Attorney

Direct email: nloser@cer.org.za

