



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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Our ref: CER 12.4/RH/NL  
19 February 2018

Dear Madam

## **DECISION IN RELATION TO THE PROPOSED THABAMETSI IPP COAL-FIRED POWER STATION ENVIRONMENTAL AUTHORISATION**

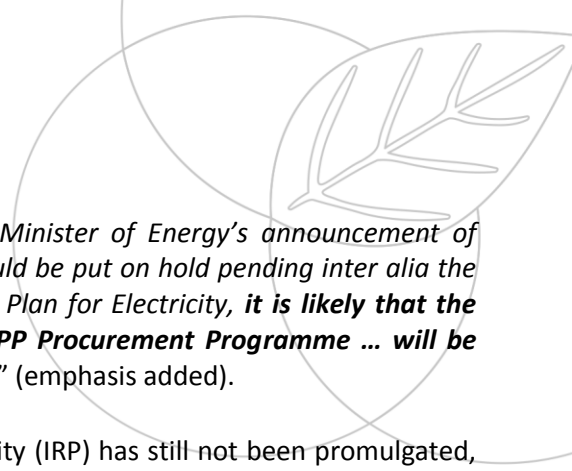
1. We address you on behalf of our clients Earthlife Africa (ELA)<sup>1</sup> and groundWork (gW).<sup>2</sup>
2. We wish to inform you that our clients will be bringing an application to review and set aside the decision of the Minister of Environmental Affairs, dated 30 January 2018, which upheld the environmental authorisation granted to the Thabametsi coal-fired power station ("Thabametsi"). We attach a copy of the Minister's decision, together with a copy of our correspondence with Thabametsi's attorneys.
3. We also request an update on the deadlines for financial and commercial close for the preferred bidders under the Coal Baseload Independent Power Producer Procurement Programme (CBIPPPP) and the status of future bid windows.
4. As you are aware, Thabametsi and the Khanyisa coal-fired power station were appointed as preferred bidders in October 2016 under the CBIPPPP. The commercial and financial close deadline for the power station projects, which was initially April 2017, was postponed throughout last year.

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<sup>1</sup> Earthlife Africa is a non-profit organisation that seeks: a better life for all people without exploiting other people or degrading their environment; and to encourage and support individuals, businesses and industries to reduce pollution, minimise waste and protect our natural resources. See <http://earthlife.org.za/>.

<sup>2</sup> groundWork is a non-profit environmental justice service and developmental organisation which works on environmental justice and human rights issues, focusing on coal, climate and energy justice, waste and environmental health. It works with South and Southern African communities, including our community groups based in Mpumalanga namely the Highveld Environmental Justice Network. See <http://www.groundwork.org.za>.

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5. In your letter of 4 October 2017, you advised that *“in light of the Minister of Energy’s announcement of 1 September 2017 in which she advised that all future programmes would be put on hold pending inter alia the finalization of the Integrated Energy Plan and the Integrated Resource Plan for Electricity, **it is likely that the Preferred Bidders under the first bid window of the Coal Baseload IPP Procurement Programme ... will be afforded extensions in respect of Commercial Close and Financial Close**”* (emphasis added).
  6. While we are aware that a revised Integrated Resource Plan for Electricity (IRP) has still not been promulgated, please advise, in any event, if new financial and commercial close deadlines have been set for the preferred bidders and, if so, what the new deadlines are. Kindly also let us know what decision, if any, has been taken in relation to additional bid windows under the CBIPPPP.
  7. As indicated above, we have been instructed to challenge the Minister’s decision to uphold the Thabametsi environmental authorisation in terms of the Promotion of Administrative Justice Act, 2000 (PAJA) on the basis that it is unlawful and unreasonable.
  8. As you are aware, in terms of the CBIPPPP Request for Proposals, any legal disputes in relation to the required environmental authorisations must be resolved in order for a preferred bidder to reach commercial and financial close. Preferred bidders also require a water use licence (WUL), an atmospheric emission licence (AEL), and a licence to generate electricity from the National Energy Regulator of South Africa (NERSA), in order to reach commercial and financial close.
  9. We note that Thabametsi has yet to be issued with a WUL or a NERSA licence – with the application processes for both still underway – and it has yet to re-apply for an AEL, which application must be subject to public participation.
  10. The High Court review in relation to the other preferred bidder - Khanyisa’s – environmental authorisation remains pending, with the rule 53 record documents awaited from the Minister to enable our client to supplement its High Court review. Khanyisa has not yet been issued with a WUL or a NERSA generation licence and there is an appeal pending against the transfer of its provisional AEL.
  11. We look forward to your response to our query in relation to status of the financial and commercial close deadline, and would appreciate any further updates on the status of the preferred bidders and the CBIPPPP.
  12. Please contact us, should you have any queries.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

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**Attorney**

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