



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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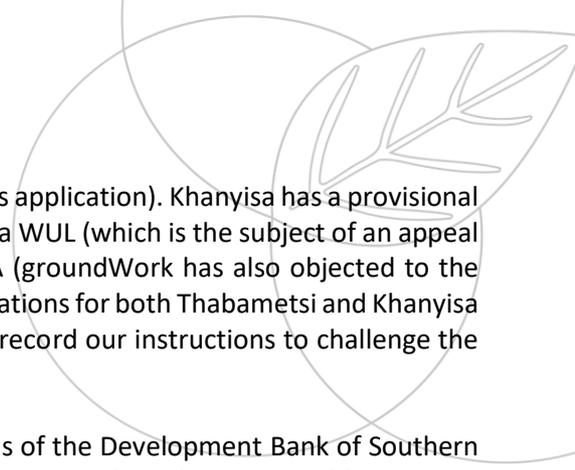
Dear Sirs

THE DEVELOPMENT BANK OF SOUTHERN AFRICA'S ROLE IN FINANCING PROPOSED NEW COAL-FIRED POWER PLANTS

1. The Centre for Environmental Rights (CER) is a non-profit organisation of activist lawyers who help communities and civil society organisations in South Africa realise our constitutional right to a healthy environment, by advocating and litigating for environmental justice. We write this letter on behalf of [the Life After Coal Campaign](#) (which is made up of the CER, Earthlife Africa, and groundWork).¹
2. We refer to our previous correspondence dated 6 September 2017 and 5 June 2018, and to the meeting held on 8 February 2018 between the Development Bank of Southern Africa (DBSA), the CER, and other civil society representatives.
3. To date, our engagement with the DBSA on the issue of financing new coal-fired power plants has been limited to the DBSA's role in financing Thabametsi, which is one of the two preferred bidders in the Coal Baseload Independent Power Producer Procurement Programme (CBIPPPP). However, we note from the Department of Energy's Fact Sheet titled "*Bid Window 1: Coal Procurement Programme*" that the DBSA is cited as having a "*debt exposure of R 6 000 million in total for the two recommended Preferred Bidders of the First Bid Submission Phase*" (i.e. Thabametsi and Khanyisa power station, a project of ACWA Power Khanyisa Thermal Power Station RF (Pty) Ltd). Given that there was no mention of the DBSA as a financier in Khanyisa's application to the National Energy Regulator for an electricity generation licence, we request that the DBSA urgently clarify its role in relation to Khanyisa.
4. We reiterate that neither Thabametsi nor Khanyisa ("the coal IPPs") is able to reach commercial or financial close, as both have a number of legal authorisations which are either outstanding or the subject of legal challenge. Thabametsi has yet to obtain any of the following authorisations: an atmospheric emission licence (the application was only submitted in May 2018, to which Earthlife Africa and groundWork objected); a water use licence (the application submitted in February 2018, to which Earthlife Africa and groundWork objected);

¹ <https://lifeaftercoal.org.za/>.

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and a NERSA generation licence (Earthlife Africa has also objected to this application). Khanyisa has a provisional AEL (the transfer of which is subject to an appeal by groundWork), and a WUL (which is the subject of an appeal by groundWork), but does not have a generation licence from NERSA (groundWork has also objected to the generation licence application). In addition, the environmental authorisations for both Thabametsi and Khanyisa are subject to ongoing review proceedings in the High Court. We also record our instructions to challenge the granting of any other licences to these projects.

5. As the DBSA is an organ of state,² performing a public function in terms of the Development Bank of Southern Africa Act 13 of 1997, any decision taken by the DBSA to finance Thabametsi and/or Khanyisa would constitute administrative action under the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Accordingly, any decision taken by the DBSA to finance these projects is reviewable under PAJA.
6. The CER has already provided input into the factors which should be taken into consideration by the DBSA in its decision-making process with regard to the financing of new coal-fired power plants. We reiterate that any decision to finance Thabametsi and/or Khanyisa would be unreasonable for reasons which include:
 - 6.1. The DBSA is a development bank, mandated to promote sustainable development programmes and projects. The DBSA, as an organ of state, must also promote the constitutional right of every person to an environment not harmful to their health or wellbeing, and must apply the guiding principles in section 2 of the National Environmental Management Act, 1998 to its investment decisions. The DBSA's objectives and commitments are severely undermined by its role in the financing of carbon-intensive activities, with high climate change impacts, such as new coal-fired power plants.
 - 6.2. Both Thabametsi and Khanyisa will have extremely high greenhouse gas (GHG) emission intensities (almost 60% higher than Eskom's Medupi and Kusile), and therefore will lead to extremely high and irreversible climate impacts.
 - 6.3. Both projects will have a negative impact on water resources which are already scarce (in the case of Thabametsi) and severely polluted (in the case of Khanyisa) – and which are likely to be further impacted as climate change progresses.³
 - 6.4. The proposed locations for Thabametsi and Khanyisa fall within polluted air quality priority areas - the Waterberg-Bojanala Priority Area (Thabametsi), and the Highveld Priority Area (Khanyisa). Ambient air quality standards are already being exceeded under current conditions in these areas, with residents suffering from severe health impacts, which include: heart attacks and strokes; lower cognitive functions, particularly in children; accelerated cognitive decline in the elderly; asthma; and respiratory infections. Any increase in pollution concentrations in these areas will have substantial effects on human health and well-being, including increasing the risk of early deaths and disease. There is a wealth of research on these air pollution impacts (including commissioned by Eskom itself); which are particularly severe in the Highveld Priority Area – where Khanyisa is proposed to be located.⁴
 - 6.5. South Africa has a constitutional environmental right, which guarantees everyone the rights to an environment not harmful to their health or well-being and the right to have the environment

² As defined in the Constitution of the Republic of South Africa, 1996, section 239.

³ See climate impact assessments by climatologist B Udall for the Olifants and the Crocodile and Mokolo Rivers at <https://cer.org.za/wp-content/uploads/2018/05/Udall-Olifants-River-Analysis-FINAL.pdf> and <https://cer.org.za/wp-content/uploads/2018/03/Udall-Mokolo-Crocodile-Rivers-Analysis-Notarized-.pdf>.

⁴ See, for example: <https://lifeaftercoal.org.za/wp-content/uploads/2017/04/Annexure-A4.pdf>; <http://m.greenpeace.org/africa/Global/africa/publications/Health%20impacts%20of%20Eskom%20applications%202014%20final.pdf>; <https://cer.org.za/wp-content/uploads/2018/08/Khanyisa-Final-Health-Report-Aug-2-2018.pdf>; and Eskom's own 2006 health studies available at <https://cer.org.za/programmes/pollution-climate-change/key-information>

protected, for the benefit of present and future generations.⁵ Thabametsi and Khanyisa would both be susceptible to legal challenge for violations of these rights.

6.6. There is evidence that these new coal-fired power plants are not needed. South Africa currently has – and for some time has had – surplus base supply capacity and, according to a recent report by the Energy Research Centre,⁶ does not need new base supply capacity for the foreseeable future. Where new capacity is required, this can be supplied more cheaply and flexibly, and with fewer harmful impacts, from sources other than coal. In addition, the coal IPPs would cost South Africa an additional R19.68 billion compared to a least-cost energy system; and would increase GHG emissions by 205,7Mt CO₂eq over the 30 year period of the power purchase agreements, and negate most of the government’s emission mitigation plans.⁷ Building the coal IPPs would make it more difficult and expensive for South Africa to meet its international commitments under the Paris Agreement. GHG emissions elsewhere in the electricity sector and in other, much-more-expensive sectors would have to be curtailed so that the coal IPPs could operate for their anticipated lifespans.⁸

7. In light of the above, we request that you:

- 7.1. clarify the current status of the decision-making process in relation to both Thabametsi and/or Khanyisa; including in relation to funding these stations. In this regard, kindly indicate: what decisions have already been taken, if any; which steps still need to be taken; and what are the envisaged timeframes for these steps and decisions;
- 7.2. notify us when a final decision has been made in relation to the financing of Thabametsi and/or Khanyisa; and
- 7.3. provide written reasons for any decisions to finance Thabametsi and/or Khanyisa in terms of section 5 of PAJA.

8. We look forward to hearing from you. Please contact us, should you have any queries in relation to this letter.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



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⁵ Section 24 of the Constitution of the Republic of South Africa, 1996.

⁶ Gregory Ireland & Jesse Burton, Energy Research Centre, University of Cape Town, *An assessment of new coal plants in South Africa’s electricity future: the cost, emissions, and supply security implications of the coal IPP programme*, May 2018. Available at: <https://cer.org.za/wp-content/uploads/2018/05/ERC-Coal-IPP-Study-Report-Finalv2-290518.pdf>.

⁷ ERC Report – p37, available at <https://cer.org.za/wp-content/uploads/2018/05/ERC-Coal-IPP-Study-Report-Finalv2-290518.pdf>.

⁸ ERC Report – p38.