Centre *for* Environmental Rights

Advancing Environmental Rights in South Africa

For the attention of the Board of Directors
FirstRand Bank Limited

Mr William Roger Jardine
Independent non-executive chairman
By email: roger.jardine@firstrand.co.za

12 September 2018

Dear Sirs/Mesdames

FIRSTRAND BANK'S ROLE IN FINANCING THE PROPOSED THABAMETSI COAL-FIRED POWER PLANT

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 addressed to your Chief Executive Officer, Head of Resource Finance, and Head of Environmental and Social Risk Management, dated 4 May 2017 and 14 December 2017 (attached for ease of reference), and to the meeting held in February 2018 between FirstRand Bank, Life After Coal Campaign, and other civil society representatives.

3. On 27 August 2018, the draft Integrated Resource Plan for Electricity (IRP) 2018 was published for public comment. Despite the clear shift in policy evident in the 2018 draft IRP, including: an acknowledgement that there is no coal in the "least cost" option; an acknowledgment that key assumptions have changed; and an acknowledgment that the least-cost option contains only solar, wind, and gas, the 2018 draft IRP nevertheless provides for the inclusion of 1000MW of coal-to-power in 2023–2024, to come from the two preferred bidders in the Coal Baseload Independent Power Producer Procurement Programme (CBIPPPP) (i.e. Thabametsi and Khanyisa).

4. We note that the 2018 draft IRP seeks to justify the inclusion of these projects by stating that they are "*already procured and announced*", and that jobs from these projects will "*go a long way towards minimising the impact of job losses resulting from the decommissioning of Eskom coal power plants and will ensure continued utilisation of skills developed for the Medupi and Kusile projects*". We dispute the accuracy of these comments.

[1] https://lifeaftercoal.org.za/.

5. It is not accurate that either Thabametsi or Khanyisa is "procured". Both have been "preferred bidders" since 2016. Neither 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.

5.1. Thabametsi has yet to obtain any of the following authorisations:

5.1.1. an atmospheric emission licence (AEL) (the application was only submitted in May 2018, to which Earthlife Africa and groundWork objected and a revised, amended application has now been made available for further comment);
5.1.2. a water use licence (WUL) (a revised application was submitted in February 2018, to which Earthlife Africa and groundWork objected – following earlier objections of January 2017); and
5.1.3. a NERSA generation licence (Earthlife Africa objected to this application).[2]

5.2. 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, meaning that the WUL is currently suspended), but does not have a generation licence from NERSA (groundWork have also objected to the generation licence application).[3]

5.3. In addition, the environmental authorisations for both Thabametsi and Khanyisa are subject to ongoing review proceedings in the High Court.

5.4. We also record our instructions to continue to oppose all licences granted to these projects.

6. In addition, we have written to Eskom[4] and to the Minister of Energy[5] setting out why the coal independent power producer (IPP) projects are not "value for money", as they are required to be by regulation 9 of the 2011 Electricity Regulations on New Generation Capacity GN R399 (GG 34262), published under the Electricity Regulation Act, 2006. As a result, the Power Purchase Agreements should not be signed. The Department of Energy is also, in no way, legally obliged to proceed with the coal IPP projects. The developers can have no claims against the Department if the projects do not go ahead – the CBIPPPP Request for Proposals (RFP) makes this clear. [6]

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[2] At the NERSA hearings in March 2018, Eskom also made representations confirming that it does not support the granting of a generation licence to Thabametsi.
[3] At the NERSA hearings in March 2018, Eskom also made representations confirming that it does not support the granting of a generation licence to Khanyisa.
[4] Letter available at: https://cer.org.za/wp-content/uploads/2018/09/CER-Letter-to-Eskom_7-Aug-2018.pdf. Annexure A available at: https://cer.org.za/wp-content/uploads/2018/09/Annexure-A-Presentation-to-PCE-on-IPP_06-March-2018.pdf.
[5] Letter available at: https://cer.org.za/wp-content/uploads/2018/09/CER-Letter-to-Minister-Radebe_7-Aug-2018.pdf. Annexure A available at: https://cer.org.za/wp-content/uploads/2018/09/Annexure-A-Presentation-to-PCE-on-IPP_06-March-2018.pdf.
[6] See, for example:

- "*the Department reserves the right to amend, modify or* ***withdraw this RFP or any part of it, or to terminate or amend any of the procedures, procurement processes or requirements detailed in this RFP during the conduct of the Coal Baseload IPP Procurement Programme, at any time without prior notice and without liability*** *compensate or reimburse any person pursuant to such amendment, modification, withdrawal or termination*" (emphasis added) (p10, clause 1.3, Part A, RFP);
- "*the Department* ***reserves the right to terminate or amend the Coal Baseload IPP Procurement Programme****, at any time, without prior notice and without liability to compensate or reimburse any person pursuant to such termination or amendment*" (emphasis added) (p10, clause 1.4, Part A, RFP);
- "*the terms and conditions set out in this RFP are stipulated for the express benefit of the Department and, save as expressly stated to the contrary, may be waived at the Department's sole discretion at any time. The* ***Department reserves the right to adopt any proposal made by any person responding to this RFP at any time and to include such proposal in any documents which may or may not be made available at any stage of the Coal Baseload IPP Procurement Programme to any other persons responding to this RFP*** *– without the obligation or liability to pay any*

7. The decision to place the urgent need for a transition to a cleaner future on hold in order to include Thabametsi and Khanyisa in the IRP, with no rational or reasonably justifiable basis, will be challenged by the Life After Coal Campaign. Credible modelling shows that, given the country's large surplus generation capacity, Thabametsi and Khanyisa are not necessary to meet demand, or to ensure security of electricity supply. Where future capacity is needed, this can be met more cheaply by other electricity sources such as wind, solar PV, and flexible generation options (such as battery storage, flexible demand responses, and gas). Thabametsi and Khanyisa are excessively expensive and polluting, and crowd out other cheaper, cleaner, and more flexible alternatives.[7] The 2018 draft IRP confirms that the coal IPPs are not part of a least-cost electricity plan.

8. Even on the assumption that the 2018 draft IRP is not amended following the public comment period, and still includes Thabametsi and Khanyisa when published in its final form, the future of Thabametsi and Khanyisa nonetheless remains unclear.

9. As set out in paragraph 5 above, the Life After Coal Campaign is involved in a number of substantive legal challenges in respect of Thabametsi and Khanyisa – resolution of which may take several years, particularly given that each challenge involves numerous stages. The Campaign is of the view – and is advised – that these challenges have good prospects of success. While the ultimate aim of the Life After Coal Campaign is to prevent these projects from going ahead altogether, at the very least, these legal challenges will cause significant delays in relation to commencement. These legal challenges should be identified as a key risk in the financing of these projects.

10. In addition to the risks associated with these legal challenges, there are major reputational risks for FirstRand Bank should a decision be made to finance Thabametsi. It is no longer possible to escape the conclusion that coal-fired electricity generation is a dirty, outdated, expensive, and inefficient electricity option, which is far outpaced by alternatives which are cheaper, cleaner, and more efficient.

11. The proposed location for Thabametsi falls within a polluted air quality priority area - the Waterberg-Bojanala Priority Area. Ambient air quality standards are already being exceeded under current conditions in this area, with residents suffering from severe health impacts; including 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 this area 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 research commissioned by Eskom itself).[8]

12. In addition to the severe health impacts associated with the burning of coal, the emissions from coal-fired electricity generation are also the leading cause of climate change globally. Both Thabametsi and Khanyisa will have extremely high greenhouse gas (GHG) emission intensities (almost 60% higher than Eskom's Medupi and Kusile power stations), and therefore will lead to extremely high and irreversible climate impacts. All over the world, finance institutions, pension funds, and even governments are making decisions to divest from fossil

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compensation or reimbursement of any nature to any person pursuant to such adoption" (emphasis added) (pp10 - 11, clause 1.5, Part A, RFP); and

- "*no bidder, its members, contractors, or its lenders shall have any claim against the Department …*" (p11, clause 1.8, Part A, RFP)

[7] 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.

[8] 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%20_final.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

fuels, acknowledging the risks and harms associated with investing in such projects from a climate change perspective. South Africa is extremely vulnerable to the impacts of climate change.[9] There is and will be increased civil society opposition to financing projects that will heavily exacerbate South Africa's exposure to climate impacts; which include increased water scarcity, increased frequency of extreme weather events, and negative impacts on food security. Moreover, these GHG emission-intensive projects will negate and render redundant many of government's GHG emission reduction measures, and will mean that significant expenditure will be required in other sectors in order to meet South Africa's international emission reduction commitments under the Paris Agreement.

13. The inclusion of new coal in the 2018 draft IRP will also cost South Africa close to R20 billion[10] more than we need to spend, and will make electricity more expensive for all South Africans – since these costs will be passed on to the consumer.

14. The Life After Coal Campaign, along with other civil society organisations both locally and internationally, works to expose the high environmental, social and economic costs of coal-fired electricity generation. Public pressure is mounting against coal. These coal IPP deals lock South Africa into dirty, excessively-expensive electricity, at a time when every effort should be made to facilitate and finance South Africa's just transition to a cleaner future.

15. Financing Thabametsi flies in the face of FirstRand Bank's commitment to assist clients with "*planning in building climate resilient infrastructure and contributing to a water efficient, lower-carbon economy and society".*[11] In financing this project, **FirstRand Bank is facilitating a dirty, climate-damaging project that is being and will continue to be met with increasing public opposition**. Together with our local and international partners, the Life After Coal Campaign will ensure that FirstRand Bank's role in this project continues to be part of the public narrative around coal, climate and the IRP in South Africa.

16. In light of the above, we urge you to withdraw any financial support for Thabametsi and we record that it is well within the bank's powers and rights to do so.

Yours faithfully
CENTRE FOR ENVIRONMENTAL RIGHTS
per:

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[9] P 8, National Climate Change Response White Paper.
[10] 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.
[11] FirstRand Bank's Environmental and Social Risk Report, 2017, at page 15.