



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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Honourable Minister Jeff Radebe

Minister of Energy

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Your refs: CER 12.4 RH/NL (Thabametsi)

CER 54.1 RH/MK (Khanyisa)

17 April 2019

URGENT

Dear Karen

UPDATE ON THE PREFERRED BIDDERS UNDER THE FIRST BID WINDOW OF THE COAL BASELOAD IPP PROCUREMENT PROGRAMME AND THE PROPOSED THABAMETSI & KHANYISA COAL-FIRED POWER STATION

1. We refer to our previous correspondence in respect of the above matter, and in particular your correspondence dated 5 December 2018, received via email on 14 December 2018. The correspondence is attached for your ease of reference.
2. You advised in the 5 December correspondence, that there was an *“extension of the bid validity for both Thabametsi and Khanyisa until 2 May 2019 and 3 May 2019, respectively.”*
3. Kindly advise, as soon as possible, if this is still the current status and deadline for commercial and financial close for either or both projects. If not, please advise what the new deadline is for commercial and financial close for both projects. Kindly advise on how many more occasions the IPP Office intends to extend the deadline.
4. If the date for commercial and financial close has not been extended, kindly advise whether the respective proprietors of the Thabametsi and Khanyisa IPP projects have submitted the proof of all the necessary and required approvals (for example environmental licences and approvals from the Department of Energy and Treasury etc) and proof of resolution of appeals and reviews lodged against their key environmental consents, as required in terms of section 5.5, Volume 2 Part 5 of the Request for Proposals.

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5. As per our previous communication, we confirm that the coal IPPs are still, in fact, unable to reach commercial and financial close at present, or for the foreseeable future. This is due to numerous licences and required authorisations still being outstanding and/or being challenged through internal appeals. Furthermore there are still High Court review proceedings against key environmental authorisations pending for both projects. As you are aware, **any appeals or reviews lodged against the granting of environmental consents must have been resolved, and proof of resolution must be provided at least one month before the scheduled financial and commercial close** deadline. Failure to do so may result in the termination of the preferred bidder appointment(s).¹
6. We would be happy to provide you with the detailed current status of the pending appeals and litigation, should you so require, and the litigation papers for both Thabametsi and Khayisa Papers can be found on our website.² In summary, however, we point out that Khanyisa's: Water Use Licence (WUL) is currently subject to an appeal before the Water Tribunal; Provisional Atmospheric Emission Licence (PAEL) is subject to an appeal before the Nkangala District Municipality's appeal authority; electricity generation licence is yet to be decided; and Environmental Authorisation (EA) is still subject to judicial review at the Pretoria High Court. Similarly, for Thabametsi: its EA is also in the process of a judicial review at the same court; and its WUL, electricity generation licence and AEL applications are yet to be decided. It is therefore clear, quite apart from the other requirements relating to financing and approvals under the Public Finance Management Act and New Generation Regulations, 2011 for example (which we understand to be outstanding), that neither of the IPPs is in a position to reach commercial or financial close. Kindly advise us should you have contradictory information in this regard.
7. In light of the above, we await your confirmation on the commercial and financial deadline for both Khanyisa and Thabametsi as soon as possible.
8. Furthermore, we continue to await your advice on whether; and if so, when, you anticipate the second coal IPPs' bidding round to be announced.
9. Kindly respond **on or before Friday 26 April 2019**.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

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Attorney

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¹ Clauses 5.5 of Volume 2, Part 5 'Preferred Bidder Documents'; Clause 14, 30 and 31 of Volume 1 Part A of the General Requirements, Rules and Provisions; and Clause 4.1.3 of Volume 2 Part 1 of the Legal Qualification Criteria of the CBIPPPP Request for Proposals (RFP).

² The Thabametsi case court papers can be accessed here <https://cer.org.za/programmes/pollution-climate-change/litigation/the-proposed-thabametsi-ipp-earthlife-africa-johannesburg-v-department-of-environmental-affairs-thabametsi-power-project-pty-ltd-and-others> and the Khanyisa court papers can be accessed here <https://cer.org.za/programmes/pollution-climate-change/litigation/groundwork-acwa-power>.