



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

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Your ref: NERSA 658-1912  
Our refs: CER12.4 & 54.5 NL/RH/MMK  
17 February 2020

Dear Sirs

### OBJECTIONS TO GENERATION LICENCE APPLICATIONS FOR THABAMETSI AND KHANYISA IPP COAL-FIRED POWER STATIONS

1. We refer to the electricity generation licence applications for the proposed Thabametsi and Khanyisa coal baseload Independent Power Producer (IPP) power stations ("the coal IPPs"), in respect of which objections were submitted by our clients, Earthlife Africa and groundWork, respectively, and in respect of which hearings took place at your offices on 27 March 2018.
2. We also refer to our correspondence to the National Energy Regulator (NERSA) of 4 April 2018 (attached) in which we raised numerous objections in respect of the licence application hearings and sought clarity on a number of issues; including the number of NERSA members present at the hearing. We have, to date, not received any response from NERSA.
3. For your ease of reference, the questions in the 4 April correspondence, in respect of which responses are still outstanding, are the following:
  - 3.1. Will NERSA be making the necessary arrangements to host public hearings in relation to these applications in the affected areas where the power stations would be based, namely Lephalale for Thabametsi and eMalahleni for Khanyisa?
  - 3.2. Were any other NERSA members (other than Mr Mkhize) present at the hearing on 27 March? If so, kindly provide the names of the members who attended the hearing. Who were the committee members appointed to conduct the hearing (please provide their names and positions and NERSA) and who was appointed as chairperson of that committee, in accordance with the NERSA Rules for Public Hearings?
  - 3.3. Were the hearing proceedings transcribed and/or recorded, as required by rule 16 of the NERSA Rules for Public Hearings, and will other NERSA members have access to and be required to consider these

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recordings? We also request that you provide us with access to the recording and/or transcription of the hearing.

- 3.4. What processes and next steps will now be followed by NERSA in relation to the licence applications?
4. We now write to ask that NERSA provide us with updates on the status of the generation licence applications for both Thabametsi and Khanyisa, given the substantial lapse of time since the applications and our clients' objections were submitted. We also ask that, as a matter of urgency, you respond to the questions in paragraph 3 above.
5. We record, and bring to your attention, that, since the hearing, there have been numerous developments in relation to the coal IPPs which are relevant to their generation licence applications; including the following:
  - 5.1. ongoing legal challenges of their environmental authorisations and licences;<sup>1</sup>
  - 5.2. with regard to the Khanyisa environmental authorisation, the Department of Environment, Forestry and Fisheries (DEFF) recently confirmed that Khanyisa's environmental authorisation lapsed on 31 October 2018. This would mean that if the proponent wished to continue with the Khanyisa project, it would have to apply for a fresh environmental authorisation, and would – in the interim - not be able to reach commercial and financial close or proceed with the project; and
  - 5.3. withdrawal of financing for the projects by key commercial banks; including Nedbank, Standard Bank and First Rand. The DBSA has also indicated that its mandate letters to support the coal IPP bids have expired.
6. To date, neither coal IPPs have been able to reach commercial or financial close.
7. We also note that an updated Integrated Resource Plan for Electricity (IRP) was promulgated in October 2019. While the policy-adjusted plan does make provision for the coal IPPs, we record our clients' objection to this decision and its legal validity. We have sought formal reasons for this, and other decisions in relation to the IRP, in terms of the Promotion of Administrative Justice Act 2000 from the Minister of Mineral Resources and Energy and from NERSA – as the concurrent decision-maker on the IRP. Those reasons were due on 3 February 2020 and are urgently awaited.
8. Given the substantial lapse of time (2 years) since the applications, objections thereto and hearings in respect of the applications, and given the various developments that have taken place since, we submit that it would be in the interests of justice that the applications be updated and resubmitted with an opportunity for objections by stakeholders, and that further public hearings be held –also in order to address the concerns raised in relation to the March 2018 hearings. We submit that it would not be appropriate or procedurally fair for NERSA to make decisions based on the outdated information before it and/or the flawed public hearing process.
9. In light of the above, we look forward to hearing from you on the response to our queries, as well as an update on the status of both licence applications.
10. Should you require more information in relation to any aspect of this letter, please advise us accordingly.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per:



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**Attorney**

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<sup>1</sup> Currently, Thabametsi's environmental authorisation is being challenged in the Pretoria High Court, and its air emission licence is subject to an appeal. As far as we are aware, it does not have a water use licence. Khanyisa's environmental authorisation is also being challenged in the High Court and there is an appeal of its water use licence pending before the Water Tribunal.