



**MINISTER
ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 142346

APPEAL DECISION

**RECONSIDERATION OF THE APPEAL AGAINST THE ENVIRONMENTAL
AUTHORISATION ISSUED FOR THE PROPOSED ESTABLISHMENT OF THE 1200MW
THABAMETSI COAL-FIRED POWER STATION AND ASSOCIATED
INFRASTRUCTURE NEAR LEPHALALE, WITHIN THE JURISDICTION OF THE
WATERBERG DISTRICT MUNICIPALITY, IN THE LIMPOPO PROVINCE**

1. INTRODUCTION

On 8 March 2017, the North Gauteng High Court remitted this matter back to me for reconsideration in terms of section 43 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), and more specifically to consider a climate change impact assessment report; a paleontological impact assessment report; comment on these reports from interested and affected parties; and any additional information required to reach a decision in this regard.

2. BACKGROUND

- 2.1** Subsequent to my appeal decision of 22 August 2016, Earthlife Africa (the appellant) brought a review application at the North Gauteng High Court to set aside the decisions by the Chief Director: Integrated Environmental Authorisations of the Department to grant approval for the construction of a 1200MW coal-fired power station, as well as my decision to dismiss the appeal by the appellant.
- 2.2** In short, the appellant sought the setting aside of both the EA and the appeal decision in its entirety, remitting the application for EA back to the Chief Director for reconsideration and directing him to consider a climate change impact assessment report, a paleontological impact assessment report, comments on these and any additional information that he may require in order to reach a decision. Such an order would basically require the EA and appeal processes to commence anew.
- 2.3** However, the Court held that the more proportional remedy is not to set aside the EA, but rather to set aside my ruling on the appellant's fourth ground of appeal and to remit the matter of climate change impacts for reconsideration on the basis of the new evidence in the climate change report.
- 2.4** Despite my dissatisfaction with the aforementioned judgment of the High Court, and in the absence of the appropriate regulatory framework for a climate change impact assessment, the CCIAR was considered and peer reviewed in the context of the current EIA and air quality framework and as part of the reconstituted appeal decision.
- 2.5** On 27 January 2017, and prior to the commencement of the above mentioned case, the applicant published a draft Climate Change Impact Assessment Report (CCIAR) for public comment. On 27 February 2017, the appellant submitted preliminary comments on the draft CCIAR. On 1 June 2017, following the conclusion of the case, the applicant published the CCIAR for final comment. On 31 July 2017, the appellant submitted comments on the final CCIAR.

- 2.6 Following a decision to have the outcomes of the CCIAR peer reviewed, the Directorate: Appeals and Legal Review had an Inception meeting with EOH Coastal and Environmental Services (EOH), which was appointed to advise me on the aforementioned CCIAR.
- 2.7 On 14 December 2017, and following receipt of comments from the Chief Directorates: Climate Change Mitigation and Climate Change Adaptation of the Department, EOH submitted its recommendations on the CCIAR.

3. DECISION

- 3.1 In reconsidering my decision on the appeal against the EA issued to the applicant to proceed with the establishment of the aforementioned proposed project, I have taken the following into consideration:
- 3.1.1 Relevant material information contained in the project file (14/12/16/3/3/40);
 - 3.1.2 The judgement of the North Gauteng High Court, dated 8 March 2016;
 - 3.1.3 The final CCIAR, dated 1 June 2017;
 - 3.1.4 The comments received from the appellants on the final CCIAR, dated 31 July 2017; and
 - 3.1.5 The recommendations by EOH, dated 14 December 2017.
- 3.2 Having considered the above information, and in terms of section 43 (6) of the NEMA, I have decided to confirm the EA issued to the applicant for the establishment of the above mentioned proposed project.

4 THE REASONS FOR MY DECISION ARE AS FOLLOWS:

- 4.1 In arriving at my decision to confirm the EA, I have noted, in particular, that the operation of the 1200 MW Thabametsi Power Station will result in significant GHG emissions and will therefore have climate change impacts. I have taken note, furthermore, that numerous mitigation measures and recommendations have been added to the EMPr and that the updated and revised EMPr was released for public comment along with the CCIAR.

- 4.2 I have taken note, furthermore, that the CCIAR concluded that the findings of the additional studies undertaken do not alter the overall conclusion that no fatal flaws were identified to be associated with the project, even though the impact rating associated with climate change impacts is rated as high. This sentiment was echoed by the EOH peer review.
- 4.3 In addition thereto, I have taken note of the conclusions of the EOH peer review, in that the specialist studies conducted adequately assessed the climate change risks and impacts associated with the proposed project. The reports were furthermore found to be of a high standard and reflected the application of international guidelines and best practice relating to the two main elements of a project level climate change risk assessment, namely GHG emissions profile (carbon footprint); and climate change risk and vulnerability assessment.
- 4.4 I have taken note, furthermore, that the EOH report concludes that while the high significance risk rating for climate resilience is not unreasonable, the significant risk relating to GHG emissions could be very high. The EOH report also questions the rationale for concluding that the overall impact of the project is medium to low, when emissions risks are very high and water scarcity risks are high and suggests that the very high GHG emission levels associated with the project implies a high social cost.
- 4.5 The EOH report concludes, however, that while the environmental and social costs associated with the proposed Power Station are high, this does not necessarily represent a fatal flaw, provided that the benefits are justified and can be motivated.
- 4.6 In addressing the justification of the benefits of the proposed project, I have taken note, as I had done when initially adjudicating on this appeal, the terms of the Integrated Resource Plan for Electricity 2010 – 2030 (the IRP).
- 4.7 The IRP is a planning tool that reviews South Africa's current electricity supply, forecasts long-term electricity demand, and determines how such demand should be met (by specifying the type, cost and timing of the new generation capacity). Furthermore, in order to meet the generation capacity required for 2030, the IRP includes a mix of generation technologies, in addition to all existing and committed power plants.

- 4.8 In determining this mix of generation technologies, the IRP considered a number of factors, including the expectations of different stakeholders; the need to reduce carbon emissions; new technology uncertainties such as costs, operability and lead time to build; water usage; localisation and job creation; Southern African regional development and integration; and security of supply. The IRP was then subject to public participation.
- 4.9 Concerns about the threat of climate change and the need for greater reliance on renewable energy were raised in the public participation process. These considerations were taken into account by decision-makers during the development of the IRP. A number of complex factors were weighed. Ultimately, the decision-makers concluded that the harms that would result from the establishment of new coal-fired facilities (to generate an addition 63 GW) were outweighed by the benefit to the country of having the additional energy generation capacity.
- 4.10 Having carefully balanced all relevant factors (including the threat of climate change), the final IRP 2010 – 2030 does not prohibit the establishment of new coal-fired power stations. Rather, it permits that 6.3 GW of new generation capacity may be derived from coal.
- 4.11 I am satisfied, therefore, that the overall assessment of the risks and impacts associated with the GHG emissions and climate change vulnerabilities is systematic, realistic, conservative and not understated.
- 4.12 In addition thereto, I have noted that the paleontological study has not identified any reasons to prejudice the construction of the power plant or associate infrastructure, subject to adequate mitigation measures being out in place. I note, furthermore, that mitigation measures and recommendations have been added to the EMPr and that the updated and revised EMPr was released for public comment along with the CCIAR.


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DATE: 2018/01/30