



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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Your ref: Report No. 64977-ZA November 21, 2011
Our ref: CER/33.5/RH
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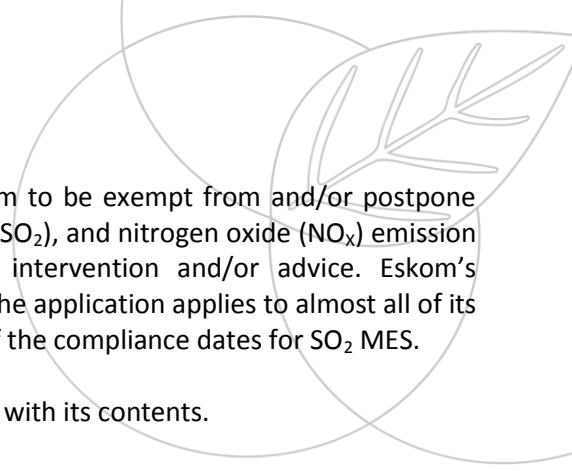
URGENT

Dear Sirs and Madams

ESKOM SOC HOLDINGS LTD'S (ESKOM) APPLICATION TO POSTPONE COMPLIANCE WITH MINIMUM EMISSION STANDARDS FOR SULPHUR DIOXIDE (SO₂) FOR MEDUPI POWER STATION

1. We act on behalf of groundWork and Earthlife Africa Johannesburg. During April 2010, our clients submitted a Request for Inspection on behalf of community members living in the area of Eskom's Medupi coal-fired power station (Medupi) near Lephalale in Waterberg District, Limpopo Province, South Africa. The World Bank loan in relation to this project amounts to US\$ 3.75 billion. In relation to our clients' request, the World Bank's Inspection Panel produced Investigation Report No. 64977-ZA entitled *South Africa: Eskom Investment Support Project (IBRD Loan No. 78620-ZA)* (Report). Among other things, the Panel noted the following four key concerns: significant water consumption raising issues of scarcity and pollution in the area; emission of gases and particulates causing increased health problems in the area; added burden on local authorities' limited institutional and financial capacity that have to cope with rapid industrialisation of the area, especially relating to public and social infrastructure and environmental management; and greenhouse gas emissions.

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2. The purpose of this letter is to alert you to an application by Eskom to be exempt from and/or postpone compliance with minimum particulate matter (PM), sulphur dioxide (SO₂), and nitrogen oxide (NO_x) emission standards prescribed for power stations, and to request your intervention and/or advice. Eskom's Background Information Document (BID) is attached hereto as "1". The application applies to almost all of its power stations. In relation to Medupi, Eskom seeks postponement of the compliance dates for SO₂ MES.
 3. Next, we provide some background to Eskom's application, and deal with its contents.

Minimum Emission Standards

4. In terms of the National Environmental Management: Air Quality Act, 2004 (AQA), certain so-called "listed activities" – including the operation of power stations – may not be conducted without an atmospheric emission licence (AEL).¹ The list of these activities was published in terms of AQA and took effect from 1 April 2010 (List of Activities).² It sets out which activities require AELs and prescribes minimum emission standards (MES) for substances resulting from listed activities, including: the permissible amount, volume, emission rate or concentration of that substance or mixture of substances that may be emitted; and the manner in which measurements of such emissions must be carried out.
5. The List of Activities also sets out time-frames within which listed activities are required to comply with the MES. Existing plants must comply with MES for existing plants by 31 March 2015 and with stricter MES for new plants by 31 March 2020.³ There is provision in the List of Activities and the 2007 National Framework for Air Quality Management (Framework) to apply to postpone MES compliance dates.⁴ An Atmospheric Impact Report (AIR) is required to be prepared in support of such application. A detailed justification must be provided for the application, and it must be demonstrated that the industry's atmospheric emissions are not causing any adverse impacts on the surrounding environment, and that ambient air quality standards in the areas are in compliance with the legislated standards.

Eskom's Application

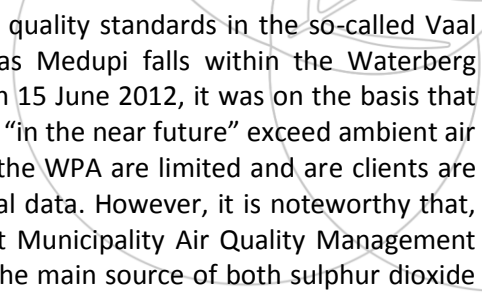
6. In its BID, Eskom seeks postponement of both the 2015 and 2020 MES for SO₂. In support of its application, it argues, *inter alia*, that: power station emissions do not harm human health; there is insufficient water available for the flue gas desulphurisation required to control SO₂; retrofitting power stations so that they are able to meet the MES will result in electricity interruptions; and that compliance with the MES will cost in excess of R210 billion – which will significantly impact the electricity tariff, making it unaffordable for consumers.
7. On behalf of our clients, we have prepared the submissions attached as "2" in response to the BID. In short, it is submitted that the applications should not have been made, and cannot be granted. Section E of the submissions address the health impacts of coal-fired power stations, and section F of the submissions deals with Medupi in particular, including the findings of the Panel. As is apparent from these submissions, our clients strongly dispute the allegation that power station emissions are not harmful to health. This is not borne out by the medical research and evidence. It is also not supported by the Panel's findings. As set out above, the Framework provides that no application to postpone MES compliance may be made, unless ambient air quality standards in the area are in compliance. As is addressed in section C of the submissions, this is not the case.

¹ Sections 21 and 22.

² List of Activities which result in Atmospheric Emissions which have or may have a Significant Detrimental Effect on the Environment, including Health, Social Conditions, Economic Conditions, Ecological Conditions or Cultural Heritage.

³ Section 5.

⁴ Section 6.

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8. In this regard, “2” refers specifically to exceedances of ambient air quality standards in the so-called Vaal Triangle Airshed Priority Area⁵ and Highveld Priority Area, whereas Medupi falls within the Waterberg Priority Area (WPA). When the WPA was declared a priority area on 15 June 2012, it was on the basis that the Minister was satisfied that ambient air quality in the area would, “in the near future” exceed ambient air quality standards. In this regard, data on the ambient air quality in the WPA are limited and are clients are currently collating such data as is available and requesting additional data. However, it is noteworthy that, even before construction on Medupi began, the Waterberg District Municipality Air Quality Management Plan⁶ indicated that Matimba Power Station (also in the WPA) was the main source of both sulphur dioxide and particulate matter emissions.⁷ In 2009, data for Lephalale indicated that although PM₁₀ concentrations met the then applicable standard, they frequently exceeded the “revised national standard” of 75 micrograms per cubic metre.⁸ It was also found that ambient sulphur dioxide concentrations were in non-compliance with both hourly and daily standards.⁹ The 1 July 2009 African Development Bank’s Environmental Impact Assessment for Medupi¹⁰ indicated that local and international air quality limits for sulphur dioxide were exceeded for hourly and daily averaging periods within the maximum impact zone of Matimba.¹¹ For these reasons, our clients are of the view that it is likely that there is currently non-compliance with ambient air quality standards in the WPA.
9. The current stage of the Eskom application process is that comment has been invited by 23 August 2013 on the proposed air dispersion modelling plan of study prepared by the air quality consultants appointed by Eskom. According to the BID, Eskom will commission the preparation of AIRs, as required. The AIRs will be made available for comment, together with copies of Eskom’s applications for postponement and/or exemption. However, it is apparently not intended to provide detailed health or environmental risk assessments in the AIRs. In the circumstances, and as is elaborated on in our submissions, the failure to do so would be wholly inappropriate. It is unacceptable to our clients.

Request for Intervention and/or Advice from the World Bank and/or Inspection Panel

10. South Africa has a problematic track record of environmental compliance and enforcement. Over and above the significant health and environmental risks of granting the applications, as one of South Africa’s largest industrial concerns and moreover a state-owned entity, there is a serious risk that the granting of Eskom’s applications will set a negative precedent for other industries.
11. Our clients salute the Bank’s recent decision only to finance coal-powered generation in “rare circumstances”. Medupi failed to meet the *Criteria for screening coal projects under the strategic framework for development and climate change* (Criteria). The Inspection Panel substantiated our clients’ concerns regarding Medupi. It is clear from the Report that there was not – as is required by the Criteria - “full consideration of viable alternatives to the least-cost options (including environmental externalities)”, nor use of “the best appropriate available technology, to allow for high efficiency and, therefore, lower greenhouse gas emissions intensity.”

⁵ Section 18 of the AQA makes provision for the declaration of priority areas in circumstances where the Minister of Environmental Affairs (or relevant MEC) reasonably believes that ambient air quality standards are being, or may be, exceeded in an area, or any other situation exists which is causing, or may cause, a significant negative impact on air quality in the area; and the area requires specific air quality management action to rectify the situation.

⁶ <http://www.saaqis.org.za/SearchDocs.aspx> and search for “Waterberg”.

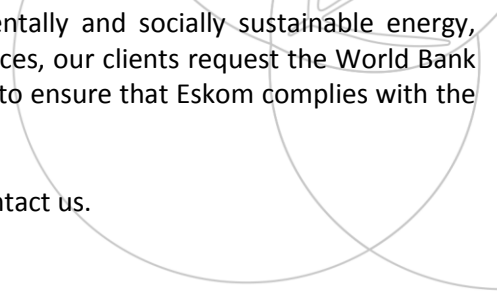
⁷ Pages 5-6.

⁸ Page 5, 7. The current 24 hourly standard is 120 micrograms per cubic metre. From 2015, this standard will be 75 micrograms per cubic metre.

⁹ Page 8.

¹⁰ <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/ESIA%20Ex%20Summary%20of%20Medupi%20Coal%20Power%20Plant%20July%201%20revised%20Final-ram-1.pdf>

¹¹ Page 11.

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12. Given this background and the Bank's commitment to environmentally and socially sustainable energy, seeking – where feasible - to facilitate a shift to cleaner energy sources, our clients request the World Bank and/or Inspection Panel to take such action as is within their power to ensure that Eskom complies with the MES.
 13. Should you require further information, please do not hesitate to contact us.
 14. We look forward to your response.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



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