

**KUSILE POWER STATION – ADDENDUM FOR THE ADDITION OF  
ASSOCIATED INFRASTRUCTURE  
TERMS OF REFERENCE FOR THE ENVIRONMENTAL  
MONITORING COMMITTEE**

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**ABBREVIATIONS**

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CBO:	Community Based Organisation
CEMP:	Construction Environmental Management Plan
NGO:	Non-governmental Organisation
DEAT:	Department of Environmental Affairs and Tourism (National)
DWAF:	Department of Water Affairs and Forestry
ECO:	Environmental Control Officer
EMC:	Environmental Monitoring Committee
EMP:	Environmental Management Plan
MDALA:	Mpumalanga Department of Agriculture and Land Affairs
RoD:	Record of Decision
ToR:	Terms of Reference

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## **1. ESTABLISHMENT AND SCOPE OF THE COMMITTEE**

The Environmental Monitoring Committee (EMC) was established in terms of the requirements of the Kusile Power Station Environmental Impact Assessment (EIA) Subclause 3.2.11 of Record of Decision / Environmental Authorisation (RoD/EA) issued by the Department of Environmental Affairs (DEA) for the Project. The EMC confines its mandate to activities directly related to Project Kusile Power Station and associated infrastructure (including the railway, 88kV power line, substations and associated infrastructure), as indicated in:

- The Kusile Power Station Environmental Impact Report (EIA, *Report No.: 4284/401281*);
- The Kusile Power Station Construction Environmental Management Plan (CEMP, *Report No.: 4446/401281*);
- The Kusile Power Station EA (RoD/EA, DEA Reference: R12/12/20/807); and
- The Kusile Power Station - Minister's decision on the appeals (DEA Reference: R12/12/20/807).

Additionally to the aforementioned, it is proposed that the Kusile Rail Project be included in the Kusile Power Station EMC as it forms part of the Power Station associated infrastructure.

## **2. GUIDING PRINCIPLES OF THE EMC**

2.1 All discussions relating to the tasks and functions of the EMC shall be transparent.

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- 2.2 All parties within the EMC shall act in an accountable and responsible manner in the deliberations of the tasks arising from the process.
  - 2.3 All proceedings of the EMC shall be recorded and be made accessible to the public.
  - 2.4 All parties shall have access to information relating to the work of the EMC to facilitate decision-making.
  - 2.5 Good faith and common understanding shall underlie all proceedings within the EMC.
  - 2.6 All matters relating to the EMC shall be addressed with the necessary urgency.
  - 2.7 Any conflict of interest/duties in terms of the role on the EMC with the development or future related developments shall be declared by members of the EMC.

### **3. ROLE, PURPOSE AND AIMS OF THE EMC**

- 3.1 The EMC has an advisory, monitoring and ‘*watch-dog*’ role.
- 3.2 The EMC will actively participate in the compliance monitoring of Eskom’s adherence to the conditions specified in the EA for the Power Station and Rail Projects and implementation of the approved EMPs by reviewing audit reports (prepared by the Environmental Control Officer) and conducting site inspections.
- 3.3 The purpose and functions of the EMC are to monitor the development with reference to:
  - 3.3.1 The management of the site and corridors during construction (in accordance with the EIR, EMP, EA, Appeal decision and any subsequent requirements specified by the DEA for both the Power Station and Rail Projects) to ensure minimal impact on the environment.
  - 3.3.2 The management of the site during operation (in accordance with the EMP) to ensure minimal impact on the environment.
  - 3.3.3 The environmental standard of activities on the site.
  - 3.3.4 The degree of nuisance and/or health hazard caused or likely to be caused to the neighbouring communities.
  - 3.3.5 The degree to which the biophysical environment is impacted upon, and when necessary, propose, discuss and recommend appropriate mitigation measures.
  - 3.3.6 The effectiveness of mitigation measures proposed in the EIR, EMPs and EA of both the Power Station and Rail projects.
- 3.4 To inform relevant authorities of non-compliance by Eskom with the conditions of the EAs, by submitting a report when there are non-compliances on a regular basis (as agreed to by the EMC and Eskom).
- 3.5 To promote environmental awareness and capacity building with regards to Project Kusile (Power Station and Rail) that shall strive to improve the understanding of surrounding communities and generate interest to keep abreast with future developments of the port.

- 3.6 To promote a sustainable social and physical environment through responsible management procedures, future rehabilitation and informed monitoring of the site / corridor.
- 3.7 To disseminate information to the various constituencies of the organisations present on the EMC.
- 3.9 To develop trust amongst the participants and interested and affected parties.
- 3.10 To evaluate Eskom's complaints procedure and channels of communication with the public on an ongoing basis.

#### 4. COMPOSITION OF THE EMC

The following section outlines the current composition of the EMC for the Kusile Power Station project. This composition must be maintained and / or mirrored for the Kusile Rail project.

- 4.1 Members nominated to serve on the EMC must have a direct interest/ involvement in the project.
- 4.2 The Committee shall include the following mandated sectors:
  - Proponent (Eskom, both with regard to over project management and site supervision);
  - Authorities (DEA, MDALA, DWA, District Municipality, Local Municipality),
  - Community (inclusive of NGO's, CBO's and the business sector)
  - ECO; and
  - Specialists (ecologist and air quality specialist).
- 4.2 To ensure a workable committee, the EMC shall not comprise of more than 25 representatives including authorities, the proponent, the ECO and the various specialists. Should the need arise for more representatives to be appointed, the Chairperson of the EMC has the discretion to do so in consultation with the EMC members.
- 4.3 Any member may appoint a *secundus* from the same organisation to represent him/ her at a EMC meeting by notifying the Chairperson/Secretariat in advance.
- 4.4 Observer status shall be afforded to anyone wishing to attend any meeting on condition that the Chairperson/Secretariat is informed well in advance of this intention. Observers shall be given limited speaking rights.
- 4.5 The quorum shall be 60% of the membership of the EMC. A quorum shall require that representatives of all three sectors (Proponent, Authorities and Community) are present.
- 4.6 In the event of any of the EMC members or their appointed representatives not being able to attend a meeting, prior notification within a reasonable period shall be provided to the Chairperson/Secretariat in writing to allow the meeting to be postponed with a reasonable

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period of notification thereafter, should this be required. At that postponed meeting, those members present shall constitute the quorum.

## **5. MEMBERSHIP REQUIREMENTS**

The current members of the Kusile Power Station Project were subjected to the following membership requirements. Should any additional members be mandatory they too will be subject to these requirements.

- 5.1 Members shall be nominated by their representing organization or constituency and appointed in writing by their respective organizations to serve on the EMC.
- 5.2 Members of the Committee shall be disqualified; if they or their appointed representatives are absent for three (3) consecutive meetings of the EMC. Should a representative no longer qualify for membership, the organization he/she represented will be invited to nominate a new representative.
- 5.3 A member may resign at any time from the EMC by submitting his/ her resignation in writing via to the Chairperson. Once a resignation has been accepted, the organization he/she represented will be invited to nominate a new representative.

## **6. DECISION MAKING PROCEDURES WITHIN THE EMC**

- 6.1 Where possible issues shall be debated until consensus is reached.
- 6.2 Where consensus cannot be reached, the issues of disagreement shall be recorded in writing and referred to the respective authorities who have jurisdiction over the relevant matters for consideration.

## **7. MEETINGS**

- 7.1 The EMC shall meet once every two months or at such intervals as a majority of the members may agree, but not less than four (4) times per annum.
- 7.2 In the event of an unusual incident occurring (relevant to the EMC's scope), any member of the EMC may request an emergency meeting with the Chairperson, the ECO and an Eskom representative.
- 7.3 The EMC shall deal with the following matters at its regular meetings:
  - 7.3.1 The report of the ECO on compliance with the EAs and EMPs.
  - 7.3.2 Any amendments required to the EMP
  - 7.3.3 Reports or complaints about incidents or related matters received from members of the public.
  - 7.3.4 Issues of concern to the EMC members. Whenever possible, these issues shall be forwarded in writing to the Chairperson/ Secretariat for inclusion on the agenda, and

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if answers are needed, shall also be forwarded to the relevant party / parties before the meeting, to facilitate discussion at the meeting.

7.3.5 Report back on relevant meetings held outside of the EMC.

7.3.6 Reports from Eskom about operational and other relevant matters.

## **8. CHAIRPERSON AND DEPUTY CHAIRPERSON**

8.1 At the inaugural meeting of the EMC, the EMC members will nominate an independent Chairperson, from within the ranks of the EMC. As per the requirements of the Power Station EA, the Chairperson must possess the appropriate people and project management skills.

8.2 The EMC shall also nominate a Deputy Chairperson at its inaugural meeting, to stand in for the Chairperson should they be unavailable.

8.3 The appointment of the Chairperson may be reviewed annually, and where there is consensus from the Committee that the Chairperson should be replaced, the existing Chairperson shall be dismissed and a new Chairperson shall be elected from within the EMC ranks. Upon dismissal, the past Chairperson shall return to being an ordinary member of the EMC.

8.4 It shall be the duty of the Chairperson to ensure the orderly conduct of meetings and to ensure that all persons present and wishing to speak are given a reasonable opportunity to do so.

8.5 The Chairperson shall be unbiased in all the deliberations of the EMC.

8.6 The Chairperson shall be the spokesperson of the EMC.

8.7 The Chairperson shall have an executive function and shall be able to call emergency meetings outside of the regular EMC meetings as and when required.

8.8 The Chairperson will approve any formal communication to be distributed from the EMC as a group to a wider audience.

8.9 The Chairperson may resign at any time from the EMC by submitting his/ her resignation in writing to the Secretariat for tabling at the next EMC meeting. Once the resignation has been accepted, a new Chairperson shall be nominated from within the ranks of the EMC.

## **9. ENVIRONMENTAL CONTROL OFFICER**

The provisions below are applicable to the Kusile Power Station Project Environmental Control Officer (ECO). It is recommended that the ECO for the Power Station take on the responsibilities of the ECO for the Kusile Rail Project as the Rail Project is an associated infrastructure of the Power Station. The provisions for the ECO are as follows:

9.1 As per the provisions of Kusile Power Station Project Condition 3.2.13 of the EA, a suitably qualified Environmental Control Officer (ECO) has been appointed by Eskom for the construction phase. The ECO's appointment shall only terminate once the final rehabilitation measures are completed and the site has been handed over to Eskom by the Contractor.

9.2 The ECO shall act on behalf of the EMC, and shall report to and be accountable to the EMC.

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- 9.3 The ECO shall audit compliance with the both EAs, environmental legislation and the EMPs.
- 9.4 The ECO shall conduct regular site inspections and environment audits.
- 9.5 The ECO shall compile an environmental compliance report every two months and distribute this to the EMC. .

## **10. RESPONSIBILITIES OF THE COMMITTEE MEMBERS**

- 10.1 As the Project Proponent for the Power Station and Rail Projects, Eskom shall:
- 10.1.1 Adhere to conditions in the EAs and implement the EMPs.
  - 10.1.2 Provide sufficient resources for the effective functioning of the EMC. In this regard, in terms of the requirements of the Kusile Power Station EA Condition 3.2.11.7 Eskom shall bear all costs associated with the EMC
  - 10.1.3 Ensure that all reports and/or complaints directed at it by any person and the responses thereto are recorded in writing, which shall be made available at each meeting of the EMC. Any complaints directed to the various official departments shall be recorded and tabled for discussion.
  - 10.1.4 Fulfil all roles as set out for members of the EMC.
- 10.2 The authorities represented on the EMC currently and shall continue to:
- 10.2.1 Oversee that all commitments in EAs, EMPs, and any other authorisations issued for the Power Station and Rail projects, are met by being involved in the monitoring function of EMC.
  - 10.2.2 Provide guidance on the functioning of the EMC.
  - 10.2.3 Evaluate all reports and correspondence received from the Chairperson.
  - 10.2.4 Fulfil all other roles as set out for members of the EMC.
- 10.3 The community organisation represented on the EMC currently and shall continue to:
- 10.3.1 Provide insights based on local knowledge.
  - 10.3.2 Keep constituencies informed of progress with the implementation of the EMPs and compliance with the EAs.
  - 10.3.3 Inform the EMC of any issues or concerns constituencies might have with regard to the environmental impact of the projects.
  - 10.3.4 Fulfil all roles as set out for members of the EMC.
- 10.4 The specialists represented on the EMC currently and shall continue to:
- 10.4.1 Provide such specialist inputs/ guidance as might be requested by the EMC.

## **11. ACCOUNTABILITY**

- 11.1 Members of the EMC are accountable to their constituencies, and are responsible for keeping their members informed of the EMC's proceedings.
- 11.2 Participation by any member of the EMC shall not be interpreted as a waiver of such a person's right to challenge any issue outside the forum of the EMC.
- 11.3 The EMC shall report back to the DEA on matters pertaining to the Project Kusile Power Station, Project Kusile Rail and associated infrastructure. The prior mechanisms for reporting shall be the minutes of the EMC meetings and the ECO's environmental compliance reports.
- 11.4 The Proponent is responsible for the management of contractors on site in accordance with the EMPs; approved Method Statements and EA conditions.

## **12. ADMINISTRATION**

- 12.1 The Eskom Environmental Manager shall fulfil the function of Secretariat of the EMC and shall be responsible for convening meetings, taking minutes and the dissemination thereof to members. Specifically, as the Secretariat, the ECO's duties and responsibilities shall include:
  - 12.1.1 Organisation of EMC meetings in consultation with the Chairperson.
  - 12.1.2 Keeping all records of the EMC.
  - 12.1.3 Taking minutes at all meetings of the EMC and ensuring accurate recordings of the proceedings off all meetings.
  - 12.1.4 Attending to correspondence and keeping copies thereof.
  - 12.1.5 Circulating notices to convene meetings.
  - 12.1.6 Preparation of documents requested by the EMC.
  - 12.1.7 Ensuring that minutes are forwarded to all members timeously.
  - 12.1.8 Circulate documentation for the next meeting to all EMC members at least 14 days prior to the meeting.
- 12.2 Eskom will be responsible for the reimbursement of costs incurred by the specialists, as well as any costs incurred by the Chairperson, over and above what would normally be anticipated for EMC members.
- 12.3 The respective organisations represented on the EMC shall be responsible for funding attendance of their representatives (Community and Authorities).

## **13. AMENDMENTS**

This ToR can only be amended with the necessary prior notification and in the presence of a full quorum. This document should be read together with the EMC guidelines compiled by the DEA in

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terms of their Integrated Environmental Management, Information Series (*viz.* . DEAT [2005] *Environmental Monitoring Committees, Integrated Environmental Management, Information Series 21*, DEAT, Pretoria.)

#### **14. DISPUTE RESOLUTION**

Any disputes related to the roles and responsibilities of the EMC that cannot be resolved within the EMC, should be referred to the DEA for resolution.