



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

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PER FACSIMILE / MAIL

Dear Ms Ball

INDEPENDENCE OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER FOR THE PROPOSED CONVENTIONAL NUCLEAR POWER STATION (NUCLEAR 1)

The Draft Environmental Impact Report (EIR) submitted to this Department in February 2010 has reference.

During the review of the draft EIR, the Department found the following issues, *inter alia*, that are of concern.

- The site which has been indicated as the preferred alternative (Thyspunt), after all specialist studies have been completed, is the most sensitive site. The following table indicates the potential environmental impacts and how the three sites measure up with regards to impacts of high and low significance:

POTENTIAL ENVIRONMENTAL IMPACTS	LOW SIGNIFICANCE	HIGH SIGNIFICANCE
Geology and geological risk assessment	All three sites	
Seismological risk	Thyspunt followed by Bantamsklip and Duynefontein	
Geotechnical suitability		All three sites
Hydrological conditions	All three sites	
Fresh water supply	All three sites	
Dune morphology	Bantamsklip and Duynefontein	Thyspunt
Air quality	All three sites	
Flora	Bantamsklip	Thyspunt followed by Duynefontein
Wetlands	Bantamsklip and Duynefontein	Thyspunt
Terrestrial vertebrate fauna	Duynefontein	Bantamsklip and Thyspunt
Terrestrial invertebrate	Duynefontein	Bantamsklip and Thyspunt

fauna		
Marine biology		All three sites
Oceanographic impacts	All three sites	
Economic impacts	Bantamsklip and Duynefontein	Thyspunt
Social impacts		All three sites
Visual impacts		All three sites
Heritage impacts	Duynefontein	Thyspunt followed by Bantamsklip
Agricultural impacts	Thyspunt followed by Bantamsklip	Duynefontein
Tourism impacts	Duynefontein and Bantamsklip	Thyspunt
Noise impacts	Duynefontein and Bantamsklip	Thyspunt
Transportation systems	Duynefontein	Bantamsklip and Thyspunt

From the above table, it is clear that Thyspunt is most sensitive and it therefore does not make sense that Thyspunt is recommended as the preferred site.

As indicated in the draft EIR, the results of the specialist studies as well as an integration workshop with the specialists, the costs and the transmission integration requirements were taken into consideration when selecting Thyspunt as the preferred option.

The Department however does not understand which weighting was coupled to which impacts, as the list of impacts selected as the most important for decision-making (as per page 11 of the draft EIR) are as follows:

- a. Transmission integration factors;
- b. Seismic suitability of the sites;
- c. Impacts on dune morphology;
- d. Impacts on wetlands;
- e. Impacts on vertebrate fauna;
- f. Impacts on invertebrate fauna; and
- g. Economic impacts.

It seems that weightings to factors a, b and g were rated to weigh heavier than c to f. If factors a, b, and g were rated as weighing more heavy, the Department would like to know how these weightings were determined and who the responsible parties were that decided on these weightings. If factors c to f were also used in determining the most suitable site, Thyspunt would have clearly come out as being the most sensitive of all the proposed sites.

With regards to factor a, b and g, the Department is not convinced that Thyspunt would have been the recommended site in terms of those factors either. With regards to transmission integration, the Department believes that the Duynefontein site would be easier to integrate into the grid than Thyspunt. With regards to the seismic suitability of the site, the Department notes that there is not a major difference between the three sites. On page 6 of the draft EIR you indicate that any deviations from a standard nuclear power station design will result in potentially significant cost and time delays to the project. With regards to the Economic impacts, the Department is not clear to which economic impacts the reference is made. Is the economic impacts referred to beneficial to the applicant or to the Thyspunt site?

- The Department is also concerned that the Bantamsklip site is removed from further consideration purely based on the costs of the project to the applicant.

- On page 11 of the draft EIR, you state that it is acknowledged that Thyspunt would experience environmental impacts of higher significance (particularly biophysical impacts) than Duynefontein. You then emphasise that the positive impact of long-term conservation on site is a significant positive impact. The Department would like to remind you that the site is currently owned by the applicant and in terms of Section 28 of the National Environmental Management Act, Act 107 of 1998 (NEMA) as amended, which relates to "Duty of Care", the applicant has a responsibility to take care of their property.
- According to the three sensitivity maps included in the draft EIR, Thyspunt was identified as the most sensitive site and this site also has a minimum amount of "least sensitive areas" compared to the other two sites.
- The Department finds it difficult to believe that the beneficial impacts of the development of the Thyspunt site would outweigh the detrimental impacts of the development of that site.

The Department hereby questions how the EAP could have reached the conclusion with regards to the preferred site with all the information that came forward during the drafting of the EIR report.

Section 18 of the EIA Regulations, GN R385, reads as the follows:

"An EAP appointed in terms of regulation 17(1) must –

- be independent;***
- have expertise in conducting environmental impact assessments, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;*
- perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the applicant;***
- comply with the Act, these Regulations and all other applicable legislation;*
- take into account, to the extent possible, the matters listed in regulations 8(b) when preparing the application and any report relating to the application; and*
- disclose to the applicant and the competent authority all material information in the possession of the EAP that reasonably has or may have the potential of influencing:*
 - any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or*
 - the objectivity of any report, plan or document to be prepared by the EAP in terms of these Regulations for submission to the competent authority"*[my emphasis]

This section clearly emphasises the requirement that the EAP must be independent.

Based on the abovementioned analysis, *inter alia*, we have reason to believe that your independence may have been compromised.

In accordance with Section 19 of GN R385 of the EIA Regulations, April 2006 as per NEMA, which reads as follows:


"19 (1) If the competent authority at any stage of considering an application has reason to believe that the EAP managing an application may not be independent in respect of the application, the competent authority must –

- notify the EAP of the reasons for the belief; and*
- afford the EAP an opportunity to make representations to the competent authority regarding his or her independence, in writing."*

The Department is hereby requesting the EAP to submit representations to this Department regarding their independence within 14 days of the date of signature of this letter.

Kindly contact the Department if you have any queries regarding this correspondence.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J. Yawitch', with a stylized flourish at the end.

Ms Joanne Yawitch
DEPUTY DIRECTOR-GENERAL: ENVIRONMENTAL QUALITY AND PROTECTION
Department of Environmental Affairs
Date: 10.05.2010