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Eskom transmission  
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**JOHANNESBURG**  
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Attention: Ms Lerato Mokgwatheng

Dear Sir

**APPEAL DECISION: THE CONSTRUCTION OF THE ESKOM GAMMA-GRASSRIDGE  
765kV TRANSMISSION LINES – NORTHERN AND EASTERN CAPE PROVINCES**

The Minister of Water and Environmental Affairs, Ms Buyelwa Sonjica, MP, has considered the appeals lodged against the decision by the Department of Environmental Affairs for the construction of the Eskom Gamma-Grassridge 765kV transmission lines between Gamma substation (Northern cape Province) and the Grassridge substation (Eastern Cape Province).

After evaluating the appeals and relevant information submitted to her, the Minister has reached a decision. A copy of her decision is attached hereto.

Yours sincerely

  
**MR SANDILE TYATYA**  
**CHIEF OF STAFF: MINISTRY OF WATER AND ENVIRONMENTAL AFFAIRS**

DATE: 17/02/2010

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MINISTRY  
WATER AND ENVIRONMENTAL AFFAIRS  
REPUBLIC OF SOUTH AFRICA

APPEAL DECISION

Ref: 12/12/20/801

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

APPEALS AGAINST THE ENVIRONMENTAL AUTHORISATION OF THE CONSTRUCTION OF THE ESKOM GAMMA-GRASSRIDGE 765 KV TRANSMISSION LINES BETWEEN GAMMA SUBSTATION (NEAR VICTORIA WEST, NORTHERN CAPE PROVINCE) AND GRASSRIDGE SUBSTATION (NEAR PORT ELIZABETH, EASTERN CAPE PROVINCE)

1. INTRODUCTION

- 1.1 In terms of section 22 of the Environment Conservation Act, 1989 (Act No. 73 of 1989 [ECA]), read with the Environmental Impact Assessment Regulations published in Government Notice No. R.1183 of 5 September 1997 (the Regulations), the Chief Director: Environmental Impact Management of the erstwhile Department of Environmental Affairs and Tourism (the Department) acting under delegation, granted to Eskom Holdings Limited (the applicant) on 27 October 2008 a record of decision (ROD) embodying an environmental authorization for the construction of the Eskom Gamma-Grassridge 765kV transmission lines.
- 1.2 The decision was subsequently appealed against and the appellants have requested the original decision to be reconsidered and set aside.
- 1.3 Notwithstanding the repeal of the relevant sections of ECA by the National Environmental Management Act, 1998 (Act No. 107 of 1998 [NEMA]), section 50(3) of NEMA provides that applications made in terms of sections 21, 22 or 26 of ECA, that had been submitted but not

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finalized when those sections were repealed, have to be finalized as if those sections had not been repealed.

- 1.4 Further, in terms of regulation 84(2) of the Environmental Impact Assessment Regulations, 2006, made under NEMA, an appeal lodged against a decision taken in terms of the previous regulations made under ECA, must be dispensed with as if the previous regulations had not been repealed.

## 2. BACKGROUND

- 2.1 The applicant proposes the construction of two 765kV transmission lines from the Gamma substation (near Victoria West in the Northern Cape Province) to the Grassridge power station (near Port Elizabeth in the Eastern Cape Province). The "Integrated Preferred Corridor" (as it is called in the Environmental Impact Report [EIR]) within which the lines will run, is indicated in the attached map. Starting from the Gamma side in the north-west, the Integrated Preferred Corridor is marked blue, then green, then orange, then blue again. The green portion swings away to the east just before Klipplaat, passing south of Jansenville, after which the corridor becomes orange, turns generally southwards and joins up with the blue ("Main") route again at Wolwefontein. (The EIR and some of the appellants call the green-orange section the Jansenville-Haasfontein Sub-Corridor, whilst others refer to it as the Jansenville-Wolwefontein route. Indeed, Wolwefontein is in fact closer to the terminus of this route. Therefore, for the sake of greater clarity and uniformity the green-orange section will be called the Jansenville-Wolwefontein Sub-Corridor in this document). The corridor that splits off from the green-orange section and runs southwards parallel to the orange corridor is known as the Haasfontein Sub-Corridor and is one of the alternative routes that was considered in the environmental impact assessment (EIA) phase but ultimately rejected. Also rejected are the Klipplaat-Wolwefontein route and the corridor that starts near Steytlerville and runs parallel to the blue corridor towards the eastern border of the map.

- 2.2 The applicant has indicated that the purpose and the

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need for the project is to strengthen the electricity transmission network to the Western and Eastern Cape to meet current and projected future electricity demand.

- 2.3 The listed activity that relates to this matter is (as quoted from the relevant Government Notice):

**Item 1 of Government Notice No R.1182 of 5 September 1997:**

*"The construction, erection or upgrading of-*

*(a) facilities for commercial electricity generation with an output of at least 10 megawatts and infrastructure for bulk supply;".*

- 2.4 Consequent upon the ROD granted to the applicant by the Department, several appellants lodged appeals in terms of section 35(3) of ECA against the Department's decision.

### **3. APPEALS**

- 3.1 Appeals from the following persons were received:

3.1.1 Mr A Rudman

3.1.2 J & JM Trust, represented by Dr J Raimondo

3.1.3 Mr A Oelofse

3.1.4 Jansenville Landbouvereniging (Jansenville Farmers' Association) represented by Mr S G Ferreira

3.1.5 The Valley Bushveld Affected Parties, represented by Mr W Barnard.

- 3.2 Generally, the appellants (all landowners or bodies of landowners) are opposed to the Integrated Preferred Corridor, specifically the green-orange portion as indicated on the map (the Jansenville-Wolwefontein Sub-Corridor), for the reasons that will appear below. They prefer the rejected Klipplaat-Wolwefontein route that traverses the Steytlerville District. Several grounds of appeal emerged from the above appeals that can broadly be categorized as follows:

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- 3.2.1 Inadequate consultation was conducted on the specialist studies and as a result they are incomplete;
- 3.2.2 Numerous alternative corridors suggested were left unconsidered;
- 3.2.3 There will be fundamental damage to the environment: vegetation (Soetnoors, Spekboom and Albany Thicket), wildlife and habitat;
- 3.2.4 Especially for enterprises that are dependent on natural resources, there will be a detrimental impact on the visual and aesthetic environment. This in turn will make the destinations less desirable for tourists, leading to economic and consequently also social decline;
- 3.2.5 Game capture by helicopter will be impeded by power lines; there already have been pilot and game captor fatalities;
- 3.2.6 The statement in the EIR (page XVII in Volume 1) that "*entire properties will need to be purchased by Eskom...*" amounts to an intention to expropriate and is tantamount to intimidation;
- 3.2.7 The separate specialist reports and the subsequent EIR have varying job creation projections that the transmission line will affect, indicating inaccuracy;
- 3.2.8 A possible alternative alignment of the corridor around the identified Sarelsrivier "no-go" area (wetland-see map) was not assessed in the EIR. The preferred corridor will have an impact of high significance on the wetland and will also be in conflict with the Water Act;
- 3.2.9 In the public participation process, no attention was given to the representations of interested and affected parties along the Jansenville-Wolwefontein Sub-Corridor and the Klipplaat-Wolwefontein route;
- 3.2.10 During the public participation process, no consultant visited the farm of one of the appellants;
- 3.2.11 The process followed during the EIA study was vague and misleading. The names of the different routes (sub-corridors) had no bearing on their true locations. The result was that many of the interested and affected parties (I&APs) did not become involved in the process;
- 3.2.12 The environmental assessment practitioner's database of I&APs was faulty and more than 50% of I&APs' addresses were missing from the database. The result was that the I&APs were not properly informed;

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- 3.2.13 There are no fewer than 7 large rivers or waterways along the Jansenville-Wolwefontein Sub-Corridor which will hamper construction and road-making along this route. This problem does not occur in the Klipplaat-Wolwefontein route;
- 3.2.14 Tourists on their way to the Greater Addo Elephant Park on the R75 will be exposed to the high profile transmission lines, whilst the Klipplaat-Wolwefontein route carries much less traffic. Furthermore, the power lines will run along the edge of the Greater Addo Elephant Park, which will make a most unfavourable impression on tourists;
- 3.2.15 One appellant questioned the motivation in the EIR to avoid the Klipplaat-Wolwefontein route, which motivation rests on the consideration that the corridor is on an acknowledged tourism route and contains historical settlements and old station buildings;
- 3.2.16 Other cultural heritage issues: Along the Jansenville-Wolwefontein Sub-Corridor (objected to by some appellants) there are 25 farmsteads older than 60 years, whilst on the Klipplaat-Wolwefontein route there are only 9. Later Stone Age archaeological sites may be expected next to drainage lines and in the lee of kopjes;
- 3.2.17 The Klipplaat-Wolwefontein route is the logical choice and will be millions of Rands cheaper than the Jansenville-Wolwefontein Sub-Corridor. The applicant ignored the inordinate cost of the preferred route;
- 3.2.18 One of the appellants questioned the integrity of the environmental assessment practitioner (EAP);
- 3.2.19 The Jansenville-Wolwefontein Sub-Corridor was decided on beforehand and the specialist studies were written to support the preferred choice.

#### 4. DECISION

- 4.1 In terms of section 35(4) of ECA, I have the authority, after considering appeals, to confirm, set aside or vary the decision of the Department.
- 4.2 In reaching my decision, I have considered the information contained in the following documents:
- 4.2.1 The project file, reference 12/12/20/801;
- 4.2.2 The EA granted by the Department, dated 14 October 2008;

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- 4.2.3 The appeals;
- 4.2.4 The applicants' comments;
- 4.2.5 The reply received from one of the appellants.

4.3 The reasons for my decision, *inter alia*, are dealt with under the following headings:

**4.3.1 Inadequate consultation was conducted on the specialist studies and as a result they are incomplete. The appellant concerned was only visited by 2 of the 14 specialists (paragraph 3.2.1 above)**

I have been advised that the consultation was done in accordance with an authoritative guideline issued by the CSIR. In some cases where the EAP had identified specific areas of concern, specialists were directed to engage with I&APs. However, it was not a requirement for each specialist to engage with each stakeholder. This is not the intention of the Regulations nor best practice and is clearly an impossible task on a project of this scale. I therefore believe that the consultation was adequate.

**4.3.2 Numerous alternative corridors suggested were left unconsidered (paragraph 3.2.2 above)**

As appears from Section 5 of the Scoping Report and Section 5 of the EIR, each suggested alternative was investigated to the extent necessary to determine whether or not it is practical, financially viable and environmentally sound. In my opinion, the averments of the appellants in this regard are unsubstantiated.

**4.3.3 There will be fundamental damage to the environment: vegetation (Soetnoors, Spekboom and Albany Thicket), wildlife and habitat (paragraph 3.2.3 above)**

The impacts on vegetation have been carefully considered in the specialist study on vegetation and in the EIR. All potential impacts were assessed by the vegetation specialists as of low/medium significance with mitigation and/or management measures. Section 9.3 of the final EIR provides detailed mitigation measures in this regard during construction and operation of the transmission lines. There will also be an Environmental Management Plan that contains specifications for land clearing and rehabilitation.

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- 4.3.4 Especially for enterprises that are dependent on natural resources, there will be a detrimental impact on the visual and aesthetic environment. This in turn will make the destinations less desirable for tourists, leading to economic and consequently also social decline (paragraph 3.2.4 above)

The EIR acknowledges that there will be visual and aesthetic impacts and that these will be of medium to high significance, even after mitigation. This is attributable to the size of the infrastructure (the pylons). Unfortunately potential negative economic impacts on tourism and eco-tourism operations cannot be mitigated through route selection. The EIR acknowledges the potential negative economic impacts on some landowners whose business enterprises may be affected. However, ultimately the national interest must prevail. I am of the view that the national interest must precede that of individuals in this instance.

- 4.3.5 Game capture by helicopter will be impeded by power lines: there already have been pilot and game captor fatalities (paragraph 3.2.5 above)

The EAP accepted that the use of helicopters in the vicinity of transmission lines is dangerous and that extraordinary care is required. Further, the EAP accepted that the transmission line alignment should be carefully investigated and agreed with individual landowners during servitude negotiations.

- 4.3.6 The statement in the EIR (page XVII in Volume 1) that "entire properties will need to be purchased by Eskom..." amounts to an intention to expropriate and is tantamount to intimidation (paragraph 3.2.6 above)

The reference in the EIR to this possibility to enable the fair and equitable resolution of conflict between the competing economic sectors appears to have been made in good faith and not to intimidate. Expropriation would also need to follow a legal process that would be subject to judicial oversight.



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**4.3.7 The separate specialist reports and the subsequent EIR have varying job creation projections that the transmission line will affect, indicating inaccuracy (paragraph 3.2.7 above)**

A projection does not purport to be exact. The appellant did not provide specific examples of discrepancies, and no further information was submitted. I am of the view that this ground of appeal is unsubstantiated.

**4.3.8 A possible alternative alignment of the corridor around the identified Sarelsrivier "no-go" area (wetland-see map) was not assessed in the EIR. The preferred corridor will have an impact of high significance on the wetland and will also be in conflict with the Water Act (paragraph 3.2.8 above)**

The ROD provides in clause 3.2.2.2 that *"The wetland areas of Sarelsrivier and the Stellenboschvlei complex must be avoided, with the enforcement of a 500m buffer zone, where practically possible."* In addition to this, clause 3.2.7.6 reads: *"All mitigation measures as stated in the Final EIR dated April 2008 and specialist studies must be strictly adhered to."* Further, Eskom has indicated that it has already secured servitude options that avoid Sarelsrivier and the Stellenboschvlei complex, in compliance with the inputs of the appellant, the outcomes of the EIA and the contents of the ROD. I am therefore of the opinion that this concern has been adequately addressed.

**4.3.9 In the public participation process, no attention was given to the representations of interested and affected parties along the Jansenville-Woiwefontein Sub-Corridor and the Klipplaat-Woiwefontein route (paragraph 3.2.9 above)**

Eskom denies this averment. It states that all representations made by the various stakeholders were considered during the EIA process. All specialists examined each corridor or sub-corridor to the same level of detail. Further, after an extended comment period for the review of the Draft EIR, the EAP consistently followed up with I&APs regarding their submissions. The outcome of this consultation was that the Draft EIR was updated into a final EIR, with stakeholders being informed of the changes. I am satisfied that the representations were considered.

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4.3.10 Further, in the public participation process, no consultant visited the farm of one of the appellants (paragraph 3.2.10 above)

The remarks at paragraph 4.3.1 apply here.

4.3.11 The process followed during the environmental impact assessment (EIA) study was vague and misleading. The names of the different routes (sub-corridors) had no bearing on their true locations. The result was that many of the interested and affected parties (I&APs) did not become involved in the process (paragraph 3.2.11 above)

According to Eskom, with whose response I have no reason to differ, the corridors were named using usable station and place names where possible. The names were first introduced in the Draft Scoping Report (SR) with the convention being maintained for the duration of the EIA (almost 3 years). The corridors were illustrated and described in the SR (draft and final) and the EIR (draft and final). I am of the opinion that a reasonable person would not have been confused on this score.

4.3.12 The environmental assessment practitioner's database of I&APs was faulty and more than 50% of I&APs' addresses were missing from the database. The result was that the I&APs were not properly informed (paragraph 3.2.12 above)

The appellant in question refers to the database itself as its evidence. This is a list of about 1100 individuals, municipalities, companies and other bodies. However it is impossible to reach any conclusion as to the completeness or otherwise from the database itself. In the absence of a list of persons or bodies whose particulars are allegedly missing from the database, this ground of appeal must be dismissed as unproven.

4.3.13 There are no fewer than 7 large rivers or waterways along the Jansenville-Woiofontein Sub-Corridor which will hamper construction and road-making along this route. This problem does not occur in the Klipplaat-Woiofontein route (paragraph 3.2.13 above)

This statement is not in line with the EIR. The question of rivers or waterways was examined in the EIR and it was found that the Jansenville-Woiofontein (green-orange on

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the attached map) and the Haasfontein (west of, and parallel to, the orange section of Jansenville-Wolwefontein) Sub-Corridors are equally suitable from a wetland and riverine viewpoint. Importantly, the Jansenville-Wolwefontein Sub-Corridor provides a viable corridor as compared to the Klipplaat-Wolwefontein route. There are some ephemeral streams in the Jansenville-Wolwefontein Sub-Corridor, but adjustments can be made to the actual placing of the towers to avoid both environmental and engineering problems.

**4.3.14 Tourists on their way to the Greater Addo Elephant Park on the R75 will be visually exposed to the high profile transmission lines, whilst the Klipplaat-Wolwefontein route carries much less traffic. Furthermore, the power lines will run along the edge of the Greater Addo Elephant Park, which will make a most unfavourable impression on tourists (paragraph 3.2.14 above)**

Eskom acknowledges that the R75 is a main road for tourists. However, as discussed in Section 8.9 of the EIR, there will be negative effects on tourism wherever the transmission lines are routed, as there are other tourism routes that also traverse the study area, such as the R338 and R63. The proposed power lines have to be placed somewhere on the landscape, and no route is without its impacts.

As regards the Greater Addo Elephant Park, Eskom finds itself between conflicting demands with some I&APs wanting the transmission lines routed through the Park, whilst others feel that the proposed alignment adjacent to the R75 and the western boundary of the Park is unacceptable and will be bad for tourism. Once again, there is the problem that the lines must be placed somewhere, and I am of the view that it is better to run the lines on the edge of the Park rather than through it. Importantly, both SANParks and the Eastern Cape Nature Conservation support the proposed corridor.

**4.3.15 One appellant questioned the motivation in the EIR to avoid the Klipplaat-Wolwefontein route which motivation rests on the consideration that the corridor is on an acknowledged tourism route and contains historical settlements and old station buildings (paragraph 3.2.15 above)**

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Referring to road signs in the Klipplaat-Wolwefontein route indicating the "Bavlaan's Route-Scenic Alternative", one appellant argued that the Bavlaan's Kloof is 145 km away and not even the main access route. He alleges that the historical settlements and station buildings are merely ruins, regarding which he provided photographs to prove his point. The appellant accused the specialist of making "misleading statements".

The argument put forward by the heritage resources specialist that the corridor is on an acknowledged tourism route takes into account the cultural landscape leading up to the Baviaanskloof vista. Regarding the alleged ruined buildings, the EAP responded that the photographs are selective and denies making misleading statements, and asserts that his statements reflect his professional opinion. I see no reason to differ with the specialist's assessment.

**4.3.16 Other cultural heritage issues: Along the Jansenville-Wolwefontein Sub-Corridor (objected to by some appellants) there are 25 farmsteads older than 60 years, whilst on the Klipplaat-Wolwefontein route there are only 9. Later Stone Age archaeological sites may be expected next to drainage lines and in the lee of kopjes (paragraph 3.2.16 above)**

Regarding the homesteads, both the EIR and the Heritage Impact Assessment (HIA) deal with this matter. The EIR requires that buildings are to be avoided. This is practically possible in every instance for these proposed transmission lines. In terms of the HIA, the overriding consideration is the cultural landscape, including the historical buildings and settlements already referred to. As to the possible presence of Later Stone Age sites, this was specifically taken into account in the HIA. In terms of the South African Heritage Resources Management Act, 1999 (Act No 25 of 1999), the provisions of which were brought to the attention of Eskom by the consultant, a developer must cease all work and inform the South African Heritage Resources Agency or the relevant provincial heritage

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agency (as the case may be) should any heritage resources, as defined in the said Act, be found during development activities. Bearing in mind the above, I am satisfied that these concerns are adequately addressed.

**4.3.17 The Klipplaat-Wolwefontein route is the logical choice and will be millions of Rands cheaper than the Jansenville-Wolwefontein Sub-Corridor. The applicant ignored the inordinate cost of the preferred route (paragraph 3.2.17 above)**

Both sub-corridors were investigated from various discipline perspectives, the integrated result of which was the identification of the Integrated Preferred Corridor (see paragraph 2.1 of this document). In this regard, it is the function of the EAP to evaluate all the specialist studies and find the most suitable route. This task may be complex, as the recommendations of specialist studies are sometimes in conflict with one another and cannot be evaluated in isolation. If each of the specialist studies is seen in isolation, it would be near impossible to find a corridor in which to construct the transmission lines. Eskom submits that the appellants' appeals oversimplify these complexities. I have no reason to find that the EAP did not adequately consider the inputs of all the disciplines and come to a reasonable conclusion.

**4.3.18 One of the appellants questioned the integrity of the EAP (paragraph 3.2.18 above)**

The following reasons were given for challenging the integrity of the EAP, all of which the EAP denies and/or contests:

- (a) The consultant enjoyed the hospitality of and was entertained by several landowners along the Klipplaat-Wolwefontein route. In response the EAP states that commercial facilities were used for meetings, midday refreshments and overnight accommodation.
- (b) The Klipplaat-Wolwefontein route (previously part of the "Blue" corridor) had been the preferred corridor during the whole investigation, but then suddenly in November 2007 the Jansenville-Wolwefontein Sub-Corridor was chosen. This is untrue according to the EAP. The "Blue" corridor was referred to as the Main Corridor, of which there were sub-corridors. The EAP never referred to the Main

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- Corridor as the preferred one and in all documentation and at all meetings, each alternative was clearly illustrated and/or described or explained.
- (c) The EIA contains many contradictions twisted facts and assumptions to find reasons why the Klipplaat-Wolwefontein route should not be selected. The EAP regards this averment as defamatory, bearing in mind that in law, the EAP is required to be independent and to sign a declaration to this effect.
  - (d) No research was done on the Jansenville-Wolwefontein Sub-Corridor; no consultant visited this area. To this allegation, the EAP responds that it was not a requirement for each specialist to engage with each stakeholder. This is not required by law or best practice and would be an impossible task on a project of this scale. In fact, specialists did visit the area to undertake their field work and in the course thereof did engage with landowners.
  - (e) Some of the specialist research on flora and avifauna (birdlife) is based on out-of-date surveys and sightings. Regarding flora, the response is that the Vegetation Specialist Study used the most recent published work (Low & Rebello, 1996), supported by field work. As to avifauna, the data used is from the National Bird Atlas Project, which is considered by avifaunal specialists as the best available data.

Generally on this ground of appeal, I am of the view that there is no adequate ground on which to fault the standpoint of the applicant.

**4.3.19 The Jansenville-Wolwefontein Sub-Corridor was decided on beforehand and the specialist studies were written to support the preferred choice (paragraph 3.2.19 above)**

This statement is rejected by the applicant and it responds by saying that by law the EAP is required to be independent and each specialist has signed a declaration of independence.

- 4.4 Based on the above, I support the conclusions of the Department in paragraph 2.2 of the ROD, *inter alia*, that the proposed activity will not lead to a significant detrimental effect on the environment, that the need for the project has been adequately demonstrated, that it will

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result in socio-economic benefits, that the mitigation measures will be adequate, and that the principles of NEMA were upheld. Consequently, the appeals are dismissed.

- 4.5 The reasons set out above are not exhaustive and should not be construed as such. I reserve the right to provide comprehensive reasons for my decision should this become necessary.



BUYELWA SONJICA, MP

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

DATE: 2010. 02. 05