

MINUTES OF AUTHORITIES' MEETING

CLIENT : Eskom Holdings Limited – Generation Division
PROJECT : Eskom Nuclear-1 EIA and EMP
PROJECT No : J27035
PURPOSE : Authority Meeting #7
PLACE : DEA Offices, Pretoria
DATE : 06 November 2009
TIME : 10:00 - 12:00

NAME	REPRESENTING	E-MAIL ADDRESS	DISTRIBUTION
PRESENT			
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ADDITIONAL DISTRIBUTION			
None			

<u>Item No.</u>	<u>Comment</u>	<u>Action</u>
1.	<p>WELCOME AND INTRODUCTIONS</p> <p>DM welcomed everyone to the meeting and introductions were made. DM queried whether there were any additions to be made to the Agenda. DM explained the procedure to be followed when a query is made to the Department of Environmental Affairs (DEA) with respect to this EIA. He explained that the first person to approach is Lene Grobbelaar (LG), the appointed case officer. If she is unable to assist, her line manager, Coenrad Agenbach, should be approached. This should be followed by himself (i.e. DM). Only at the last resort should the Chief Director be approached.</p> <p>JMB replied that Arcus GIBB respected the Department's wishes in this regard and will follow the approach outlined for the remainder of the EIA.</p>	Arcus GIBB
2.	<p>AIM AND EXPECTED OUTCOMES OF MEETING</p> <p>JMB thanked the DEA and officials concerned for making the time to meet with Arcus GIBB and Eskom. She added that as good practice dictated, Arcus GIBB have and will continue to run a completely independent, transparent and inclusive EIA process. The aim of this authority meeting, the seventh for the EIA, was to:</p> <ul style="list-style-type: none"> • Provide the DEA with an update regarding the EIA process. • Obtain the DEA's comment on the Final Plan of Study for EIA. • Discuss the options available to Eskom with respect to the Application submitted to the DEA. • The DEA's decision regarding the Department of Environmental Affairs and Development Planning's (DEA&DP) (Western Cape) request for specialist peer review reports to be made available to the public. • To provide the DEA with an update on the integration of the Nuclear-1 and three transmission line EIAs. 	
3.	<p>OVERVIEW OF THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS</p> <p>JMB provided the following overview of the EIA process to date:</p> <ul style="list-style-type: none"> • The EIA process commenced in late 2006. A number of sites along the South African coastline were identified during the Nuclear Sites Investigation Programme (NSIP) undertaken by the Environmental Evaluation Unit at the University of Cape Town as being suitable for further investigation for the construction, operation and decommissioning of a conventional nuclear power station. • The Scoping Phase of the EIA for Eskom's first nuclear power station as part of its planned 20 000 MW fleet (i.e. Nuclear-1) started with desktop and field investigations by 27 technical specialists on five alternative sites, namely: 	

<u>Item No.</u>	<u>Comment</u>	<u>Action</u>
	<ol style="list-style-type: none"> 1. Brazil on the West coast; 2. Schulpfontein on the West coast; 3. Duynfontein alongside the current site of the Koeberg Nuclear Power station near Cape Town; 4. Bantamsklip near Pearly Beach; and 5. Thuyspunt near Cape St Francis and Port Elizabeth. <ul style="list-style-type: none"> • Extensive public participation, including Public and Focus Group Meetings as well as Key Stakeholder Workshops, was undertaken across the country, at the announcement phase of the EIA. National, regional and local advertising also took place during this phase. • Based on the outcomes of the Scoping Phase studies and public consultation, the Brazil and Schupfontein alternative sites were determined not to be feasible for the construction, operation and decommissioning of Nuclear-1. The factors for the decision were largely due to the geographical location of the sites. The remoteness of the sites would create difficulties in integrating the power into the power grid in time for Nuclear-1 and the lack of demand in the region around these two sites. The audience was also reminded that a 'loss of power' is experienced when power is transported long distances. These sites remain suitable for future nuclear power stations. • The FSR was submitted to the DEA in May 2008. • Specialist studies for the Environmental Impact Report commenced after the completion and submission of the FSR. The initial findings of the studies were submitted to Arcus GIBB and Eskom for initial review in December 2008. The studies also underwent an internal technical peer review process as a quality assurance check. • During 2009 the studies were updated and additional field work undertaken, as necessary. • Approximately 70% of the Technical specialist studies have been completed and reviewed thus far. Arcus GIBB expects that by 18 December 2009 all specialist studies will be completed. • In order to facilitate the integration of the results and recommendations of the specialists studies the technical specialists have been divided into four teams and will be meeting over the next month in these focus groups to discuss and integrate their results. The specialists have also been requested to individually rank the specialist studies for each site. Groupings were determined by similarity / level of interdependence of specialist fields with one another. The specialist integration meeting (the third such meeting in this EIA process) will take place on 24 and 25 November 2009 and will be attended by all specialists. The meeting will be used to integrate the technical specialist findings and recommendations, as well as rank the specialist studies and sites (only if Eskom's application remains only for one nuclear power station namely Nuclear-1). Fatal flaws and legislation will be the most influential factors in the ranking process for the specialist studies. • Arcus GIBB are currently drafting the chapters for the EIR. 	

<u>Item No.</u>	<u>Comment</u>	<u>Action</u>
	<ul style="list-style-type: none"> • Public Participation Process (PPP) for the EIR will commence early next year. The PPP process, nature and format of meetings/ workshops will be the same as that carried out during the Scoping Phase of the EIA. • Going forward key dates for the remaining part of the EIA process are as follows: <ol style="list-style-type: none"> 1. Feedback from the DEA with respect to the FPoS: 30 November 2009 2. Decision by Eskom with respect to the Application to the DEA: 30 November 2009 3. Completion of technical specialist studies: 18 December 2009. 4. Pre-specialist Integration Meeting Focus Groups with technical specialists: 05 – 17 November 2009. 5. Specialist Integration Meeting: 24 and 25 November 2009. 6. Integration of specialist reports and preparation of Draft Environmental Impact Report (DEIR): 26 November to 26 January 2010 7. Submission of the DEIR to the DEA: 27 January 2009 8. Presentation of the DEIR to DEA senior management and the Review Panel: 08 to 12 February 2010 9. Public comment period for the DEIR: 02 February to 26 March 2010 (60 days) 10. Public Meetings, Key Focus Group Meetings and Key Stakeholder Workshops: 22 February to 12 March 2010 (over 3 weeks; 1: 5 days in Cape Town area, Week 2: 5 days in Pearly Beach/ Hermanus area and Week 3: 5 days in Cape St Francis area; public meetings will be preceded by public open days and each week will culminate in a Key Stakeholder Workshop) 11. Finalisation of Final Environmental Impact Report (FEIR) and presentation to the DEA for a decision as well as in the public domain for reference purposes: 11 May 2010 12. DEA decision regarding application for Nuclear-1: 30 August 2010 • TCS explained that despite discussions with potential vendors has been deferred from Eskom to Government, there remains significant pressure on Eskom to finalise the EIR. Eskom is still required to break ground in January 2011. 	
	<ul style="list-style-type: none"> • AG enquired as to how long the DSR was placed in the public domain. • JMB and TCS responded that initially a 45 day comment period was provided. An extension to that period was provide, lasting more than 15 days, however the official comment period is stated as 60 days. 	

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<u>Item No.</u>	<u>Comment</u>	<u>Action</u>
	<ul style="list-style-type: none"> • TCS queried whether the DEA require a presentation of the DEIR be given. • JMB proposed this meeting be held during the second week of February 2010 after the report has been with the DEA for a week. • The DEA confirmed that such a presentation would be welcomed and proposed that two presentations be given. The first, to the DEA review panel and a second to the senior management in the Department, who will eventually be signing off on the final decision for the EIA. LG to confirm dates in during the second week in February 2010 with JMB. 	DEA
4.	DISCUSSIONS	
4.1.	The DEA's comments / questions on the Final Plan of Study for EIA	
	<p>JMB reminded those present that the Final Scoping Report (FSR) which has been submitted and approved by the DEA in 2008. The Final Plan of Study (PoS) for EIA has been submitted in October 2009 to the DEA after it had been updated with comments received from the public and a separate Issues and Response Report (IRR) appended. It is hoped that the DEA's comments on the FPoS can be discussed at this meeting and any issues that require clarification or addressing can be highlighted and resolved as quickly as possible by thereafter by the EIA Team and/ or Eskom.</p> <p>LG answered that she and the review panel has no issues to raise at present, but stated that she is awaiting internal comments from her superiors within the Department. The comments are expected by next week Friday. LG will draft all documents in preparation for receipt of the comments so that when they are received, they can easily be incorporated and forward to Arcus GIBB and Eskom.</p>	DEA
	TCS explained that Eskom and Arcus GIBB would, ideally, like to have all tasks related to the closure of the Scoping Phase and DEIR completed before Government holiday closure for 2009. This will allow Eskom and Arcus GIBB to attend to any issues raised before the new year.	
	LG stated that the comments on the Final PoS will be officially signed off by the DEA within the next two weeks.	DEA
	JMB enquired whether a draft of the Department's can be provided in the interim.	
	DM suggested that a discussion will be the optimal response should be raised on the Final PoS.	
	LG confirmed that she will call Arcus GIBB should any issues arise.	DEA
4.2.	Combined Application for the three sites vs using EIA regulations for three sites – potential legal issues	
	JMB stated that resolution must be established as to what Eskom's options are in terms of applying for environmental approval for the construction, operation and decommissioning of a conventional Nuclear Power Station on more than one of the alternative sites that have been deemed to have no fatal flaws during the Scoping Phase of the EIA. Arcus GIBB and Eskom have commissioned a number of legal opinions on the matter, which include an assessment of the potential risks to the EIA process as	

<u>Item No.</u>	<u>Comment</u>	<u>Action</u>
	<p>well as to Eskom in terms of its fast-track implementation plans for its planned nuclear programme.</p> <p>TCS explained that previously the DEA has stated that one application can be submitted for the construction, operation and decommissioning of a nuclear power station at three sites under the existing Regulations as well as under the expected new EIA Regulations. Eskom and GIBB have sought several legal opinions regarding this matter all of which concluded that a combined application would pose high risk to the proposed project. The following areas of concern for Eskom have been raised:</p> <ol style="list-style-type: none"> 1. No alternatives will have been considered 2. A delay in the process for one site will delay the process (e.g. in the event of an appeal relating to one of the sites) for the rest of the sites; and 3. In terms of the existing EIA Regulations, a joint application cannot be submitted because the sites are in different provinces. The new Regulations have been amended to exclude this requirement, but they have not yet been promulgated and Eskom cannot wait until this has been done <p>TCS proposed that two applications can be made for construction, operation and decommissioning of the nuclear power plant i.e. the current one for Nuclear-1 and a second one for Nuclear-2. The third site can be retained as a site alternative as required by the EIA Regulations. It is proposed by Eskom that if a second application is submitted, the same information will be used as that from the first (i.e. the same DSR, FSR, etc.). Otherwise all other information can be used for both. Exemption will be required from the DEA in terms of not repeating the Scoping Phase for the additional application(s). The public have been informed from the beginning of the EIA process that nuclear power station may be built on all of the alternative sites, as Eskom rolls out its nuclear programme. TCS stated that one of the motives for applying for exemption from the Scoping Phase of the EIA is the need for additional comment may result in public fatigue and frustration.</p> <p>TCS A legal opinion is pending and the DEA's comment on this favoured approach is required.</p> <p>AG added that if Eskom submits a second application and submits an application for exemption from undergoing the Scoping Phase again then if and when the DEA grant approval for exemption, this is considered as a decision from the Department and then could be subject to appeal. AG commented that this is unfortunately a procedural matter and is therefore mandatory. The DEA request Eskom to submit, in writing, the intended approach that is to be taken with regard to the application for authorisation for more than one site, as well as the legal opinion(s). This will then be sent to the DEA legal section for review.</p>	Eskom
	<p>TCS outlined the outcomes of the discussions above as follows:</p> <ul style="list-style-type: none"> • Eskom favours the pursuit of the option that will grant authorisation for more than one site and will pose the least risk to the process. • Eskom submit an additional application for Nuclear-2 and request exemption from redoing the Scoping Phase EIA for all sites, as this would pose less risk for Eskom than waiting for the promulgation of the new EIA Regulations and applying for a combined application. The second application piggy back on the current process and only a single report i.e. current report is submitted for both applications. The current public participation process will also form part of the second application. 	

<u>Item No.</u>	<u>Comment</u>	<u>Action</u>
	<ul style="list-style-type: none"> The Government Task Team requires security that the environmental process will not produce any further unforeseen legal complications. If Eskom chooses to remain with the current application for Nuclear-1 then the EIR will rank and recommend the favoured site for Nuclear-1. If all the sites are feasible, the ranking may be viewed as a phasing in option for Eskom for implementation of its future nuclear programme. 	Eskom
	LG commented that the DEA would expect that all Interested and Affected Parties (I&APs) be informed of Eskom's intended actions and provided with an opportunity to comment, regardless on which option is chosen.	Eskom and Arcus GIBB
	JMB stated that the comment period for the second application can be advertised to the I&APs concurrently with the request for comment on the Draft EIR.	
4.3.	Reviewer reports – DEA&DP's request to make public Cooperative Agreement between the DEA and NNR	
	JMB reported that Arcus GIBB has responded to the letter received from the DEAD&DP and a copy of this response has been forwarded to the DEA for information purposes. The last point raised by the DEAD&DP, stating that the findings of the specialist reviewers (reviewers) must be made public, is of concern to Eskom and Arcus GIBB. The review process was intended to be for internal quality control purposes and to assist in the production of top-quality final specialist reports. All comments / concerns raised by the reviewers have been addressed by the specialists and they have/ will confirm this with Arcus GIBB by means of a statement. TCS stated that it will be extremely difficult to communicate how all of the reviewers' concerns were addressed by the specialist, as this was discussed by the parties concerned in meetings, discussions and other correspondence and a way forward concluded.	
	AG questioned as to whether the reviewer's comments have been referenced, and added in the case that they have been then the reviewers' comments may be subject to PAIA.	
	TCS added that the reviewers' participation is not a legal requirement and their comment should not be subject to PAIA requirements.	
	JMB explained that the reviewers were employed to add additional credibility to the technical specialist aspects of the EIA work and to add as an additional technical quality check. No reference has been made to the review reports in any of the EIA documentation thus far i.e. Draft and Final Scoping Reports. It has been, however, stated at Public and Focus Group Meetings, Key Stakeholder Workshops and on the website that the review will be undertaken for internal quality purposes.	GIBB
	LG confirmed that the DEA had not applied their minds to this request from the DEAD&DP and would in time reply to the letter in question.	
	AG stated that a response including the Chief Director's comments will be copied to Eskom and Arcus GIBB.	DEA
	DM enquired whether specialists had signed confidentiality agreements, as there was a real danger of a technical reviewer going to the press should his/ her comments not be addressed by the relevant specialist in their report.	

<u>Item No.</u>	<u>Comment</u>	<u>Action</u>
	JMB positively confirmed that all specialists, including the technical reviewers had signed confidentiality and non-disclosure agreements.	
4.4.	Clarification of conflicts between the NNR/ DEA Memorandum of Understanding and Director General's letter dated August 2008	
	TCS explained that there are a number of conflicts between the Memorandum of Understanding (MoU) and the Director General's letter dated August 2008. The MoU states comment regarding the radiological studies will be provided by the NNR. However the letter from the Director General of the DEA states that comment regarding radiological issues will not be provided. Written clarity is requested from the DEA on this issue.	DEA
4.5.	Integration of nuclear EIAs	
	JMB explained that there has been substantial interaction between the Nuclear-1 and the three Transmission Line EIA teams. Comments referring to the Nuclear-1 EIA received by the transmission line EIA team are sent to the Nuclear-1 team for incorporation into the Issues and Response Reports (IRRs) and <i>vice-versa</i> . Some of the specialists are conducting studies for both EIAs. Where the specialists differ, the specialists for the different EIAs have been in close communication with each other regarding their study results, conclusions and recommendations.	
	AG asked What are the timeframes and progress with respect to the EIAs for the transmission lines?	
	LG commented that the DSR for the Thuyspunt site has been completed and submitted to the DEA.	
	JMB added that many comments were received from the public regarding the Bantamsklip transmission line EIA. Arcus GIBB intends to release the FSR into the public domain during the second last week of February 2010. A second comment period is required as substantial changes were made to the Scoping Report due to changes in alternative corridors 'crossing' the Langeberg mountains. Key stakeholders in two environmentally sensitive areas, namely Wellington/ Drakenstein and the Overberg, are not in agreement regarding alternative corridors and two Multi-stakeholder Workshops are being held in November 2009 to gain consensus amongst I&APs. JMB stated that the EIA for Duynfontein has just commenced.	
	AG mentioned that it would be ideal to have the EIAs for the transmission line and power station approved at the same time. This will be easier for the DEA who can consider all EIAs concurrently. Problems arising from one of the EIAs may affect the other.	
	TCS commented that construction of the nuclear power plant will take six years whereas the transmission line will take two years to construct, hence the need for the proposed power plant to be authorised as soon as possible.	
	JMB request that the case officers reviewing the transmission line EIAs attend the Nuclear-1 EIA authority meetings.	

<u>Item No.</u>	<u>Comment</u>	<u>Action</u>
	LG is assessing all but the Bantamsklip transmission line EIA. She will ensure that the new case officer for the Bantamsklip transmission line EIA attends future meetings.	DEA
5.	CLOSE	
	JMB provided a review of the agreed upon action list for implementation after the meeting:: 1. LG to provide dates for the presentation to the DEA senior staff and review panel (two presentations) during the second week in February 2010.	DEA
	2. JMB to send LG an updated EIA programme for Nuclear-1 and key dates within that programme.	Arcus GIBB (Completed)
	3. JMB to send the DEA minutes of the authority meeting for review and approval.	Arcus GIBB and the DEA
	4. JMB to forward the legal opinions received to the DEA after Eskom has authorised Arcus GIBB to do so.	Eskom and Arcus GIBB
	5. Eskom to submit, in writing, a description of the preferred way forward to the DEA with respect to the number of applications to be submitted.	Eskom and Arcus GIBB
	6. LG to respond to DEA&DP letter before the end of November (and copy Eskom and Arcus GIBB into the response).	DEA
	7. LG to draft a letter clarifying disparities between the MoU between the NNR and the DEA and the letter from the Director General received in August 2008.	DEA
	DM confirmed with attendees that there were no further issues for discussion and thanked everyone for attending.	

Minuted by: Julian Warbreck, Arcus GIBB
Reviewed by: Jaana-Maria Ball, Arcus GIBB
Accepted by: Tyrone Singleton, Eskom
Project No: J27035

Jaana-Maria Ball (Arcus GIBB)
Director and Discipline Leader: Environmental Services Division

Dumisane Mthembu (DEA)
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Tyrone Singleton (Eskom Generation Division)
Chief Environmentalist

11 November 2009