



**MINISTER
ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 164521

APPEAL DECISION

**APPEAL AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE
PROPOSED SALDANHA BAY NETWORK STRENGTHENING PROJECT WITHIN THE
SALDANHA BAY LOCAL MUNICIPALITY IN THE WESTERN CAPE PROVINCE**

1. INTRODUCTION

In terms of Regulation 25 of the Environmental Impact Assessment Regulations, 2014, published by Government Notice (GN) No. 38282 of 4 December 2014 (2014 EIA Regulations), regarding activities identified under section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Acting Chief Director: Integrated Environmental Authorisations of the Department of Environmental Affairs (the Department) granted Environmental Authorisation (EA) to Eskom Holdings SOC Ltd (the applicant), on 23 June 2017, for the proposed Saldanha Bay network strengthening project within the Saldanha Bay Local Municipality in the Western Cape Province.

2. BACKGROUND AND APPEAL

- 2.1 On 18 April 2016, the applicant lodged an application for the proposed Saldanha Bay network strengthening project, within the Saldanha Bay Local Municipality, in the Western Cape Province. The proposed project involves the construction of a new distribution and transmission substation, the decommissioning of the Blouwater substation, two 400kV power lines and associated upgrade and extension of the Aurora substation.
- 2.2 The applicant commissioned an independent Environmental Assessment Consultancy, namely Savannah Environmental Pty (Ltd), to conduct an Environmental Impact Assessment (EIA) for the above-mentioned application.
- 2.3 The final Environmental Impact Assessment report (EIAR) for the proposed project was received by the Department on 2 March 2017.
- 2.4 The Department was thereafter satisfied that the applicant complied with the minimum requirements formulated in the 2014 EIA Regulations and that the final EIAR was adequate to assess the impacts associated with the proposed project. As a result thereof, the Department granted an EA to the applicant on 23 June 2017, authorising power line corridor 3 and transmission and distribution substation site A for proposed project.
- 2.5 Following the issuance of the aforementioned EA, the Directorate: Appeals and Legal Review received an appeal from the applicant on 17 July 2017. The appeal by the applicant is premised on its dissatisfaction with the authorised site and power line route.
- 2.6 The Department's response to the grounds of appeal was due to be submitted on or before 10 August 2017 but was however submitted on 15 August 2017, which was 5 days outside of the prescribed timeframes. The Department accordingly submitted a request for condonation for the late submission of its response on 21 August 2017, which condonation request was granted by the Director: Appeals and Legal Review on 7 September 2017.

3. DECISION

3.1 In reaching my decision on the appeal against the aforementioned EA, I have taken the following into consideration:

3.1.1 Relevant material information contained in the project file (14/12/16/3/3/2/926);

3.1.2 The applicant's grounds of appeal, received on 17 July 2017;

3.1.3. The response to the appeal by the Department, received on 15 August 2017, and

3.1.4. The outcome of the meeting held with the applicant on 17 October 2017.

3.2 In terms of section 43 (6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, or condition of the Department, or to make any other appropriate decision.

3.3 Having considered the above mentioned information, and in terms of section 43(6) of NEMA, I have decided to uphold the appeal by the applicant and to refer the matter to the Department for the issuance of an amended EA, authorising powerline route corridor 6 and transmission substation site alternative F.

3.4 In arriving at my decision on the appeal, it should be noted that I have not responded to each and every statement set out in the appeal and where a particular statement is not directly addressed, the absence of any response should not be interpreted to mean that I agree with or abide by the statement made.

3.5 Furthermore, should the applicant be dissatisfied with any aspect of my decision, it may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

4. THE REASONS FOR MY DECISION ARE AS FOLLOWS:

- 4.1 The applicant contends that the Department did not apply its mind to the information provided in the final EIAr. According to the applicant, the Department failed to take into account the objections received from interested and affected parties (I&APs) regarding the transmission substation alternative A.
- 4.2 The applicant contends, furthermore, that the final EIAr concludes that although the majority of specialists recommended corridor 3 and transmission substation site A as the preferred alternative, discussions with landowners in the area confirmed that site A is not suitable due to the planned Mulilo open cycle gas turbine plant in the vicinity of Site A.
- 4.3 The applicant further contends that various other landowners, including Arcelor-Mittal, also indicated that site A would not be suitable from a technical feasibility perspective, considering the other planned industrial developments around the authorised area.
- 4.4 As a result thereof, the applicant submits that transmission substation site F, with transmission line corridor 6 is the preferred option, based on both environmental and technical considerations.
- 4.5 In response to the appeal by the applicant, the Department submits that transmission substation sites A and F are located within an agricultural landscape, adjacent to each other. The topography of both sites are furthermore flat and suitable for the proposed substation and no vegetation, trees or watercourse are present within sites A and F.
- 4.6 The Department concedes that there is therefore no difference between the authorised site and the preferred site by the applicant from an environmental perspective, but submits that its decision was based on the findings and recommendations of the specialist studies as well as comments from Heritage Western Cape which supported the authorised site.

- 4.7 In evaluating the appeal by the applicant and the response thereto by the Department, I note that the authorised substation site and power line corridor is not preferred by the applicant, primarily due to feasibility constraints. I note, furthermore, that these constraints came to light during the assessment of alternatives in the EIA process and that this information was made available to the Department prior to the issuance of the EA.
- 4.8 I have further taken note of the concerns raised by both the applicant and I&APs during the EIA process concerning the planned use of site A for other projects.
- 4.9 Further to the above, I have taken note of the concerns raised regarding heritage, however I am satisfied that condition 30 of the EA adequately mitigates against potential heritage impacts. Importantly, I have noted that from an environmental perspective, the impacts associated with development on the authorised route, as opposed to the preferred site are almost identical.
- 4.10 In light of the foregoing, I cannot find that there are significant environmental impacts associated with the authorising of transmission substation site F with transmission line corridor 6, particularly as it is preferred by the applicant.
- 4.11 As a result thereof, the appeal by the applicant is accordingly upheld and the matter is referred to the Department for the issuance of an amended EA, authorising powerline route corridor 6 and transmission substation site alternative F.



DR B E MOLEWA, MP

MINISTER OF ENVIRONMENTAL AFFAIRS

DATE: 2017/11/11