



**MINISTER
ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA**

Reference: LSA138982

APPEAL DECISION

APPEAL AGAINST THE PROPOSED CONSTRUCTION OF THE PORT ELIZABETH SUBSTATION, UPGRADING OF THE EXISTING GRASS RIDGE AND DEDISA SUBSTATIONS AND THE CONSTRUCTION OF 2 X 400kV TRANSMISSION POWER LINES FROM THE PORT ELIZABETH SUBSTATIONS TO GRASSRIDGE AND DEDISA SUBSTATIONS, EASTERN CAPE PROVINCE

1. INTRODUCTION

In terms of regulation 36 (1) of the Environmental Impact Assessment Regulations, 2010, published by Government Notice (GN) No. R. 543 of 18 June 2010 (EIA Regulations), regarding activities identified under section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Deputy Director-General: Legal, Authorisations, Compliance and Enforcement (DDG: LACE) of the Department of Environmental Affairs (the Department) authorised Eskom Holdings SOC Limited (the applicant), on 12 September 2014, to proceed with the construction of the Port Elizabeth Substation, upgrading of the existing Grassridge and Dedisa Substations and the

construction of 2 x 400kv transmission power lines from the Port Elizabeth Substations to Grassridge and Dedisa Substations.

2. BACKGROUND

- 2.1. The applicant appointed SIVEST SA (Pty) Ltd as its Environmental Assessment Practitioner (EAP) for the purpose of conducting an Environmental Impact Assessment for the Thyspunt Transmission Lines Integration Project (TTLIP).
- 2.2. On 9 June 2008, the applicant applied for three environmental authorisations, namely the Northern corridor 3X400kV transmission power lines, the Southern corridor 2X400kV transmission power lines and the PE substation and associated 2X400kV transmission power lines. The aforesaid applications were required for the proposed TTLIP which is dependent on the authorisation of the proposed Thyspunt Nuclear Power Station.
- 2.3. The PE substation and associated 2X400kV transmission power lines (PE Substation component) was separated from the TTLIP and an environmental authorisation (EA) was issued on 12 September 2014 in respect of the PE substation component only. The Department had advised on the separation of the PE Substation component from the TTLIP, as it was not dependant on the proposed Thyspunt Nuclear Power Station and the applicant had expressed the critical need to supply power to the Nelson Mandela Metropolitan Municipality and surrounding regions.
- 2.4. On 5 December 2014, the applicant lodged an application to amend the EA as it contained an incorrect reference to the preferred alternative. The applicant further requested that the format of the coordinates must be changed from decimal degrees to degrees, minutes and seconds. The applicant also requested that the wording of conditions 32, 36 and 37 be amended. The aforesaid amendment was deemed to be non-substantive in nature.

3 THE APPEAL

In terms of section 43 (1) of NEMA, Werksmans Attorneys, on behalf of Calvus Properties Pty (Ltd) (the appellant) lodged an appeal on 3 November 2014 against the EA issued to the applicant on 12 September 2014.

4. DECISION

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

4.1.1 Material information contained in the project file (12/12/20/1213);

4.1.2 The grounds of appeal submitted by the appellant on 3 November 2014;

4.1.3 The response to the grounds of appeal submitted by the applicant on 2 December 2014;

4.1.4. The answering statement submitted by the appellant on 21 January 2015;

4.1.5 The comments received on 11 February 2015 from the Chief Directorate: IEA of the Department on the grounds of appeal.

4.2 In terms of section 43 (6) of the NEMA, I have decided to:

4.2.1 Dismiss the appeal lodged against the granting of the EA by the DDG: LACE of the Department; and

4.2.2 Confirm the EA issued by the DDG: LACE of the Department on 12 September 2014 for the proposed project.

4.3. 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.

The reasons for my decision are as follows:

4.3.1 VISUAL IMPACT

The appellant refers to the Final Environmental Impact Report and states that it records the findings of the visual impact assessment which confirms, *inter alia*, that the planned two parallel running lines in the Southern Corridor have visual implications as the appellant will be exposed to two sets of power lines running alongside one another. The appellant avers that there will be significant visual intrusion and it is thus critical that the mitigation measures in terms of routing and alignment of the lines be adhered to in the final routing of the power lines in order to avoid visually sensitive areas.

The applicant, in response, contends that the Department had advised the EAP in a letter dated 5 July 2015 that the two applications relating to the Southern and Northern Corridors had been placed on hold and the EAP had subsequently informed the public via a letter dated 2 August 2013, that the PE substation component will be separated from the TTLIP.

The applicant explains furthermore that the EA was issued in respect of the proposed new Port Elizabeth substation and associated 2X400kV power lines from the proposed new Port Elizabeth substation to the existing Grassridge and Dedisa transmission substation (PE substation component). The applicant goes on to state that the appellant's properties falls within the "yet to be authorised" area and that an EA had been granted for the PE substation component only.

The Department has furthermore confirmed that the application pertaining to the PE Substation component was processed as a separate application which did not form part of the TTLIP and the existing EA had been granted in respect of the PE Substation component only.

In evaluating this ground of appeal, I am aware that the purpose of the TTLIP was to transmit power to be generated at the proposed Thyspunt Nuclear Power Station. However, since the issuing of an EA for the proposed Thyspunt Nuclear Power Station had not been decided upon, the Department was not in the position to make an informed

decision on the TTLIP. As mentioned *supra*, the TTLIP consisted of three applications, two of which relate to the Southern and Northern corridors and the other to the PE substation component. As a result thereof, the Department had advised the applicant that the two applications relating to the Northern and Southern Corridor will be kept in abeyance until a decision is taken on the proposed Thyspunt Nuclear Power Station. However, the application relating to the PE substation component had been separated from the TTLIP and granted based on its independence from the proposed Thyspunt Nuclear Power Station and the immediate critical need to supply power within the Nelson Mandela Municipality and surrounding areas.

In evaluating this ground of appeal, I have perused the project maps depicting the route, alignment and corridor of the proposed PE Substation and associated 2X400kV transmission lines to the existing Grassridge and Dedisa substations. It is evident from the above that the appellant's property does not fall within the impacted region of the currently authorised project.

Further to this, I am aware that on 27 January 2015, a site visit was conducted by the Directorate: Appeals and Legal Review within the Department for purposes of obtaining clarity on the grounds of appeal lodged. It had been noted during the aforementioned site visit that the appellant's property is situated a considerable distance away from the proposed site of the PE Substation component and therefore the proposed 2X400kV transmission lines is completely out of the appellant's view. The appellant has mistaken that the EA granted relates to the Southern Corridor application, which is not the case as detailed above.

In view of the above mentioned considerations, this ground of appeal is dismissed

4.3.2 PIECEMEAL DECISION MAKING

The appellant contends that an Environmental Impact Assessment (EIA) must contain a description and assessment of the significance of any environmental impacts, including cumulative impacts, that may occur as a result of the undertaking of the activity or

identified alternatives or as a result of any construction, erection or decommissioning associated with the undertaking of the activity. The appellant contends furthermore that the Department must be able to apply its mind to all the impacts prior to decision-making and that deferring decision-making on associated components to a future date constitutes conditional and piecemeal decision-making. The appellant avers that by the Department not applying its mind to all the impacts on the associated components, it advocates unsustainable development and is tantamount to legally impermissible administrative action.

The appellant submits furthermore that the EIA for the nuclear power station and all its related and associated components, including the substations and power-lines, must be combined in a composite EIA process in order for I&APs to give proper consideration to the full extent of the environmental impacts and for the decision-maker to apply its mind to the cumulative impacts.

In response to this ground of appeal, the Department submits that because the PE substation component is envisaged to operate independently from the proposed nuclear power station, it has been dealt with as a separate application and therefore cannot be considered to be an "associated activity/component" of the proposed TTLIP. The Department submits furthermore that because the Northern and Southern Corridors' decision is dependent on the proposed nuclear power station, the Department placed these two applications on hold.

In evaluating this ground of appeal, I concur with the reasons provided by the Department in support of the separation of the PE Substation application from the TTLIP. I furthermore cannot find support for the appellant's contention that the Department failed to apply its mind properly in granting authorisation for the aforementioned proposed project, and therefore this ground of appeal is accordingly dismissed.

4.3.3 CONCERN AROUND THE REVISED EIA TEAM PREFERRED ALIGNMENT AND AMENDMENTS TO THE EA

The appellant refers to the EIA team-preferred alignment which, if utilised, will result in the proposed power lines being completely shielded by the Van Staden Mountains, thereby creating no visual impact on the appellant. In this regard, the appellant contends that the revised alignment has not been assessed by an independent visual impact specialist.

In response to this ground of appeal, the applicant contends that the revised alignment is utilised as the basis on which to finalise an alignment of the proposed power lines in the post EA phase and will only be determined after negotiation with all directly affected landowners. The applicant contends furthermore, that the purpose of applying for an amendment to the EA is to, amongst others, rectify the incorrect reference to the Motherwell Alternative as the Preferred alternative and to reword condition 37 so that it is practically implementable.

In evaluating this ground of appeal, I have noted that the applicant has indeed submitted an amendment application for the above-mentioned reasons, and a decision on the amendment application will only be taken after the finalisation of this appeal. I note furthermore, the appellant's concern around the revised alignment, but as discussed in the paragraph 4.3.1 above, the proposed PE Substation and associated power lines falls well outside the appellant's view shed and thus the appellant's averments surrounding the need for a visual impact assessment remains tenuous.

In light of the foregoing, this ground of appeal is therefore dismissed.



MRS B E E MOLEWA, MP
MINISTER OF ENVIRONMENTAL AFFAIRS

DATE: 2015/02/23