



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

APPEAL QUESTIONNAIRE

An electronic copy of this questionnaire may be obtained from:

Mr Z Hassam at telephone: 012 399 9356 or e-mail:

AppealsDirectorate@environment.gov.za

Once completed, this document must be forwarded to:

E-mail: AppealsDirectorate@environment.gov.za

Physical Address: Department of Environmental Affairs, 473 Steve Biko Road,
Environment House, Arcadia, Pretoria, 0002

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Project information:

Applications for postponement/suspension of compliance time-frames relating to the national environmental management: air quality act 39 of 2004 minimum emission standards in respect of Eskom Holdings SOC Ltd.

Reference: Eskom/postponements

National Air Quality Officer's decision date: 30 October 2021

Date received by Interested & Affected Parties: 14 December 2021

IMPORTANT! Please note:

- *The decision of the department is reflected in the letter of authorisation or rejection. The conditions of approval are contained in the environmental authorisation document, attached to the authorisation letter.*
- *The appeal must be accompanied by all relevant supporting documents or copies of these that are certified as true by a commissioner of oaths.*
- *The grounds of your appeal and the facts upon which they rest must be set out. You should formulate your objections or concerns as averments and not as questions about the project. Please therefore refrain from material or remarks that do not contribute to the merits of your appeal.*
- *To assist in this regard, the following questions are listed as a guideline only – more space may be used if necessary:*

1. Are you lodging this appeal as an individual or on behalf of a community/organisation?

Individual	organisations
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If on behalf of a community or organisation, please provide proof of mandate to do so.

Please see the signed mandate letters authorising this appeal from groundWork and Earthlife Africa, respectively.

2. Is your appeal based on factors associated with the process that was followed by the applicant in obtaining the postponement of compliance / suspension of compliance?

Yes	No
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However; please note the Appellants procedural inconsistencies highlighted in paragraphs 27-8 in the Annexure A appeal submission.

3. Is your appeal based on factors associated with the process that was followed by the applicant in sharing the decision with Interested & Affected Parties (I&APs)?

Yes	No
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Please provide reasons:

Please refer to Section B – Request for Condonation Annexure A appeal submission:

Due to the timing of the publication of the decisions on the eve of the public holiday period — which were before the First Respondent for over a year — and the fact that the I&APs have not had sight of the Second Respondent's appeal, the Appellants were not provided with a reasonable period to duly consider the decisions and the prospect of an appeal and to resolve a way forward by 25 January 2022 – the adjusted appeal deadline.

We maintain that filing this appeal 14 calendar days after the adjusted deadline, in the circumstances, is not an unreasonable delay, there would be no prejudice upon either Respondent if this condonation request is granted, as the enforcement of the First Respondent's decisions is suspended pending the outcome of the Second Respondent's appeal, and the interests of justice favour the Minister's consideration of the grounds of appeal.

4. Is your appeal based on factors associated with environmental impacts not taken into account by the department in refusing or authorising the application?

Yes	No
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Please provide reasons:

Please refer to Section E - Grounds of Appeal in the appeal form and set out in the Annexure A appeal submission:

On grounds of appeal (i) – (iii) (paragraph 51 – 62), we argue that the decision to grant Majuba, Kendal, and Tutuka, power stations postponement of compliance with the NOx new plant standard from 1 April 2020 to 31 March 2025 and directing the station to comply with a limit of 1300mg/Nm³ is unlawful. Allowing Eskom to emit at levels that undermine the existing plant standards is a blatant violation of Section 11D of the amended List of Activities. The NAQO's decision renders redundant the already weak MES. It is a deliberate weakening, and therefore contravention, of the applicable laws that were put in place to protect public health and wellbeing. The NAQO's legal position is unlawful as well as contrary to section 24 of the Constitution.

It is also determinative that the Majuba, Kendal, and Tutuka power stations are situated in the HPA, which remains non-compliant with the NAAQS. Therefore, granting any of these applications for coal-fired power stations in the HPA or any other priority area is ultra vires the Constitution, the AQA, the amended List of Activities, the 2017 Framework, and the provisions of NEMA.

In addition, Eskom's reasons for its Majuba, Kendal, and Tutuka applications, do not reasonably explain why, despite over 10 years of notice, it delayed in taking meaningful steps to comply with the MES, especially at a 'midlife' power stations with a scheduled end-of-life dates of 2035, onwards. This failure runs contrary to the 2017 Framework's requirement that Eskom provide "a detailed justification and reasons for the application.

On ground of appeal (iv) (paragraphs 63- 67), we argue that the decision to grant suspension of compliance for Camden, Hendrina, Arnot, Komati, Grootvlei, and Kriel power stations without detailed and clear decommissioning schedules accompanying the applications is unlawful. Paragraph 11B of the List of Activities provides that *"an existing plant to be decommissioned by 31 March 2030 may apply to the National Air Quality Officer before 31 March 2019 for a once-off suspension of compliance timeframes with minimum emission standards for new plant. Such an application must be accompanied by a detailed decommissioning schedule"*.

It is not permissible for the First Respondent, with the licensing authorities, to consider the suspension applications in the absence of clear detailed decommissioning schedules stations, let alone grant the applications. This is unlawful and the suspension of compliance decisions must be set aside. We submit that Eskom's decommissioning dates do not constitute a "detailed" or a "clear" decommissioning schedule per station for the following reasons, for the reasons provided in the appeal.

The condition that decommissioning schedules must be submitted a year from the date of issue of the decisions — by 30 October 2022 — does not cure the invalidity of the First Respondent's decisions, when the List Activities and the 2017 Framework require clear and detailed decommissioning schedules to be submitted as a pre-requisite for the suspension applications to be considered in the first instance.

Under the additional and compounding ground of appeal (v) (paragraphs 68 - 74), we argue that the direct adverse impacts on the surrounding environment caused by Eskom's emissions in the HPA is unlawful. Along with the criteria that the area in which a station is located must be in compliance with NAAQS, paragraph 5.4.3.4 in the 2017 Framework also requires Eskom to demonstrate that its emissions are not causing direct adverse impacts on the surrounding environment. We submit that, based on the documentation available to I&APs for comment, Eskom was unable to satisfy this specific requirement in its applications.

In light of the severe health impacts associated with PM_{2.5}, we reiterate that Eskom's cumulative contribution to the formation of PM_{2.5} in parts of the HPA — largely caused by the nine power stations, which are the subjects of this appeal — is fatal to Eskom's applications. This not only has direct adverse impacts on the environment, but, it is also acknowledged in Eskom's Summary Motivation Report that the effect of this accumulation will be an increasing health risk for the residents across a large part of the Highveld. This will more than likely only sustain the state of non-compliance with NAAQS in the HPA, in particular, and the continued breach of section 24 of the Constitution.

5. Would you agree to the activity proceeding if your concerns can be addressed by rectifying the process or mitigating or eliminating the impacts of the activity?

Yes	No
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Please provide reasons:

The nine power stations that are the subject of this appeal should not be granted postponement of compliance or suspension of compliance with the new plant MES; instead, where stations cannot meet the new plant MES, they should not operate and/or their decommissioning dates should be expedited. We reiterate paragraph 67 in the Annexure A appeal submission regarding what constitutes a clear and detailed decommissioning plan/schedule and the manner in which decommissioning/closure plans should be implemented to ensure fairness, transparency, and justice.

6. Are you fundamentally opposed to any development activity on the site?

Yes	No
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Please provide reasons:

groundWork and Earthlife Africa are not opposed to any development on the power station site per se, provided it is ecologically sustainable and it actually complies with the NEMA Principles and section 24 of the Constitution.

7. Do you have an objection in principle against the decisions?

Yes	No
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Please provide reasons:

By and large, the Appellants accept the decisions, in accordance with the List of Activities, as amended, the AQA, NEMA, and the Constitution. As set out in Section F - Grounds of Appeal (i) – (v) in the appeal form and set out in Annexure A, this appeal is limited to the decisions concerning Eskom’s Kendal, Tutuka, Majuba, Camden, Hendrina, Arnot, Komati, Grootvlei, and Kriel power stations (9 coal-fired power stations in total).

8. Does your appeal contain any new information that was not submitted to the environmental consultant or department prior to the department’s consideration of the application?

Yes	No
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If the answer above is yes, please explain why it should be considered by the Minister and why it was not made available to the environmental consultant or department during the application process.

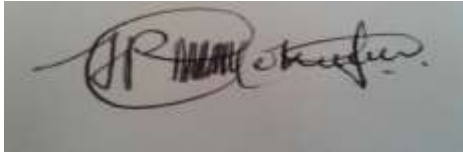
- 1. The summary table as “Annexure A1” presents the application outcome per Eskom power station, along with the scheduled end-of-life dates, among other relevant information. The fleet of coal-fired power stations have been separated into four basic categories – ‘old stations’; ‘older stations’; ‘mid-life’ stations; and ‘new build’ stations, namely Medupi and Kusile power stations.**

This is a simple consolidation of existing information and serves as an aid for the Minister in considering the appeal.

- 2. Relevant email correspondence is attached as “Annexure A4”, between July 2019 and September 2020 in relation to “additional technical information” that Eskom submitted to the First Respondent following a request to provide further supporting evidence.**

8. DECLARATION:

I declare that the contents of this submission are to the best of my knowledge the truth and I regard this declaration as binding on my conscience.



FIRST APPELLENT

DATE: 08/02/2022



SECOND APPELLENT

DATE:08/02/2022

