

Another two proposed coal power plants taken to court

For failing to consider climate impacts

Environmental justice organisation groundWork, represented by the Centre for Environmental Rights, has instituted two new court actions in the Pretoria High Court against the Minister of Environmental Affairs and others, challenging the decisions of the Minister and the Department of Environmental Affairs (DEA) to authorise proposed independent power producer (IPP) KiPower and Khanyisa coal-fired power stations, without a full assessment of the plants' climate change impacts.

Both power stations would be based in the Mpumalanga Highveld – declared an air quality priority area a decade ago because of the poor air quality. The Highveld is home to 12 existing Eskom coal-fired power stations*, which together with numerous other polluting mines and industry in the area, result in significant air pollution and non-compliance with health-based ambient air quality standards.

Khanyisa and KiPower would also both have significant impacts on the Upper Olifants River Catchment, which is already stressed, mainly due to impacts of existing mines and industry in the area.

Olifants river

Earlier this year, the Thabametsi IPP power station planned for Limpopo was challenged in court for its failure to consider climate change impacts. In that case, the North Gauteng High Court confirmed that there is a legal obligation for the Minister and DEA to ensure that a climate change impact assessment for projects like coal-fired power stations - which are likely to have substantial climate impacts - is conducted before giving approval.

Neither KiPower nor Khanyisa's environmental impact assessments (EIAs) contained a comprehensive assessment of the climate change impacts that the plants will have, such as an assessment of indirect and lifecycle greenhouse gas (GHG) emissions for the plants, or how the surrounding areas and

the plants' own resilience will be impacted by climate change if the plants go ahead. Both EIAs identify that there are no economically feasible options to mitigate the plants' GHG emissions. Both KiPower and Khanyisa – given the technology that they propose using – are anticipated to be significant GHG emitters, as Thabametsi's climate change impact assessment has shown.

The 600MW KiPower power station, proposed to be based near Delmas, is to be developed by companies Kuyasa Mining (Pty) Ltd and KiPower (Pty) Ltd. KiPower did not submit a bid under the first bid window of the Coal IPP Procurement Programme. However, the company has indicated its intention to bid under the next bid window, when (and if) announced. Kuyasa has indicated that the plant might even proceed outside of this Procurement Programme.

Licences

The Khanyisa project is also a proposed 600MW coal plant, which would be based near eMalaheni. It is to be developed by the company ACWA Power Khanyisa Thermal Power Station RF (Pty) Ltd – linked to the Saudi Arabian ACWA Power.

Unlike KiPower, Khanyisa is already a successful bidder (along with the Thabametsi power station), appointed under the first bid window of the Coal Baseload IPP Procurement Programme. Both Thabametsi and Khanyisa are

required (under the Coal Baseload IPP Programme requirements) to reach financial close before the end of the year and to commence operating by no later than December 2021. Both of them, however, have numerous licences outstanding. They also cannot reach financial close if there are pending legal disputes in relation to their environmental authorisations.

The Centre for Environmental Rights (CER), which represented Earthlife Africa Johannesburg (ELA) in the Thabametsi proceedings, is also representing groundWork in the KiPower and Khanyisa cases. The CER made earlier submissions on the proposed projects and appealed the decision to authorise KiPower, including on the basis that the EIA needed to consider the plant's climate change impacts. However, in the Minister's appeal decision, she stated that "...there is currently no legal basis to inform such [climate change impact] assessments within the EIA framework".

Khanyisa's environmental authorisation was issued in 2013. Following the Thabametsi judgment, it became clear that, despite its earlier authorisation, Khanyisa – which would operate and emit GHGs until 2070 at least - could not be allowed to proceed without conducting a climate change impact assessment.

Bobby Peek, director of groundWork says: "South Africa is very much at risk and vulnerable to the impacts of climate change, particularly the Highveld and the Upper Olifants River Catchment. In these areas it is the poor that will suffer most. In any event, South Africa simply cannot withstand more polluting coal-fired power stations, especially given their staggering climate impacts".

Climate change assessment

CER attorney Nicole Loser points out that: "The stance taken by the Minister and DEA, namely that there is no legal basis for a climate change impact assessment, is clearly incorrect, and directly contradicts the findings of the High Court in the Thabametsi case. The law is clear that neither KiPower nor Khanyisa can be allowed to go ahead without a full climate change impact assessment. The Life After Coal Campaign will challenge any potential power plant that fails to assess these impacts."

The government respondents in the Khanyisa case now have until 29 September 2017 to file the record of decision – the information that was before the Minister and DEA when they made their decisions that the power station could proceed. The record of decision in the KiPower case is already overdue, but KiPower and Kuyasa have indicated their intention to oppose the litigation. Once groundWork receives the records, it will have an opportunity to supplement its court papers with any new and relevant information.

ELA, groundWork and the CER are part of the Life After Coal/Impilo Ngaphandle Kwamalahle campaign which discourages investment in new coal-fired power stations and mines; accelerates the retirement of South Africa's coal infrastructure; and works to enable a just transition to renewable energy systems for the people.