

Our Ref: J27035

9 September 2010

Centre for Environmental Rights
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Observatory
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Email: info@cer.org.za

Attention: Ms. M. Fourie

Dear Ms. Fourie

Johannesburg

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NUCLEAR-1 EIA (EIA: 12/12/20/944): CONSULTATION WITH THE SEA VISTA COMMUNITY

Your letter dated 10 June 2010 addressed to Arcus GIBB (Pty) Ltd (GIBB) and Eskom Holdings Limited (Eskom) and copied to the Department of Environmental Affairs (DEA) has reference. We note that the Centre for Environmental Rights (CER) is representing the Sea Vista Forum, which represents the communities in Sea Vista and China Town.

YOUR COMMENT (1)

The Centre for Environmental Rights is a non-profit organisation established by non-government organisations in the environmental and environmental justice sectors to provide legal support and services to civil society. More information about the Centre is available at www.cer.org.za One of the focus areas of the Centre is to support civil society organisations in effective public participation in environmental decision-making processes, including environmental impact assessments (EIAs).

We have been approached by the Sea Vista Forum to represent them in relation to the public participation of the Sea Vista and China Town residents in the Nuclear 1 EIA. As you know, this predominantly Afrikaans and Xhosa-speaking community is situated approximately 11 km from the Thyspunt proposed site for the nuclear facility. The residents of this community established the Sea Vista Forum to enable the affected community to try and understand the impacts, both positive and negative, that the construction of a Nuclear Power Station will have on their lives. The Sea Vista Forum is also part of the Thyspunt Alliance.

As you will also be aware, on 28 April 2010, our clients addressed a letter, written in both English and Afrikaans, to yourself and the Department of Environmental Affairs setting out their concerns about the public meeting on 16 April 2010.

The key issues raised in that letter were:

- that notification of the public meeting in the Sea Vista community was inadequate, both by way of notices put up in the community as well as underfranked letters sent to community members;
- that the public meeting for the Sea Vista community was held on a Friday night, which is not a day conducive to good public attendance;
- the significant police presence at the meeting discouraged community members from attending the public meeting;
- questions were answered by Eskom employees rather than by Arcus Gibb, as independent environmental assessment practitioners;
- translations were done by an Eskom employee, which translations our clients allege were not accurate;



- crucial questions about the safety of a nuclear reactor were fobbed off and no adequate response given to Sea Vista residents.

RESPONSE (1)

Notification of public meeting at Sea Vista

The notification of all public meetings that have been held at Sea Vista as part of the Nuclear-1 EIA process to date have not solely relied on the placing of notices. ACER Africa (ACER), the Public Participation Consultant, has used various means to notify Sea Vista residents. These include (but are not limited to) telephonic consultations with key representatives of the community (Mr. Busakwe [*Sea Vista Resident, Kouga Municipality official*] and Mr. Mnikeli Mzanywa [*Ward 1 Council Representative, Kouga Municipality*] during the period February to May 2010); notification to registered Interested and Affected Parties (I&APs) via personalised letters; and the use of a loudhailer to inform community members of public meetings. Although advertisements are placed in various publications in the Eastern Cape, it is recognised that media advertising is not the preferred method for notifying Sea Vista residents. In the EIA Team's experience, the notification of public meetings by word of mouth through community representatives, and the use of a loudhailer, have been the most effective methods of communication regarding public meetings.

It is important to note that the Sea Vista community falls within the jurisdiction of the Kouga Local Municipality and in addition to the above means of notification, all consultation and other initiatives regarding public meetings have been undertaken in close consultation with the Kouga Municipality representatives of Ward 1, whom the EIA Team (GIBB and ACER) understand to be the main contact persons for public engagements.

The EIA Team would also like to state that the Sea Vista community representatives have not submitted (whether in writing or verbally during the public meetings) any complaints regarding deficiencies in the notifications of meetings to date. In addition, at all meetings, Sea Vista residents have been asked to indicate their preferences for the public consultation process, e.g. days for holding public meetings, language preference, etc. The feedback ACER has received pursuant to such requests has been adopted at the future meetings as part of an iterative and interactive public participation process. A subsequent meeting was held with the Sea Vista community on 25 May 2010 with the intention to address the concern raised regarding holding a meeting on a Friday evening and additional Afrikaans translations of the executive summary, as well as Xhosa translations of the Executive Summary.

Based on correspondence sent to ACER, the Sea Vista Forum has four (4) members, namely, Mr. Alwijn Malgas, Mr. Petrus Leen, Mr. Sydney Lamont and Ms. Thobeka Petze. In all our previous engagements with the Sea Vista residents, the relevant stakeholders in Sea Vista community and the Municipality we have not been made aware of the Sea Vista Forum's mandate to act as the representative of the Sea Vista Community.

The Public Participation Process as a legislated process recognises the existence of structures within all potentially affected communities and seeks to work with and through them, where possible. The use of verbal notifications has been to ensure that the language needs of the participants are addressed and specifically to provide for illiterate members of the public.

Based on the different approaches used, which include loud hailers, advertisements, personalised letters, word of mouth, liaising directly with key stakeholders (i.e. community representatives), the EIA Team believes that the measures undertaken to notify Sea Vista residents of public meetings in connection with the EIA process as being reasonable, acceptable and within the requirements of the law.



Underpaid postage of letters

This incident occurred as a result of bulk postage (using postage paid envelopes), which were dispatched from the Durban Central Post Office. ACER regrets this unfortunate incident and has apologised to I&APs who incurred costs prior to receiving their letters of notification regarding the public meeting.

With regard to this incident, it is important to note the following:

- This incident was unintentional.
- It was not experienced by the Sea Vista community members only.
- Not all Post Office branches in South Africa requested members of the public to pay in order to receive their letters.
- Members of the public who incurred a cost in order to receive their letters advised ACER, who reimbursed them at R 5.00 per letter.
- ACER has the following records:
 - 40 letters in total were returned to ACER, i.e. letters that were not claimed at the Post Office. Based on ACER's records, these letters were returned by the St Francis Bay Post Office.
 - ACER telephonically contacted I&APs whose letters were unclaimed advising them of the incident.
 - The returned letters were re-sent to those I&APs who were affected by the incident with the correct postage paid envelope.
 - The contents of the letters were as follows:
 - ❑ Notification to I&APs of the availability of the Draft Environmental Impact Report (EIR) for public comment;
 - ❑ Comment sheet; and
 - ❑ Executive Summary of the Draft EIR Report in English.

In addition, the above information was subsequently made available to Sea Vista residents at the public meetings, and copies were made available at the offices of the Kouga Municipality Office (in St Francis Bay), as well as left with Mr. Busakwe (Sea Vista Community representative, employed by Kouga Local Municipality). In addition, announcements of availability of information were made at the Sea Vista public meetings held on 16 April and 25 May 2010. It is ACER's opinion that any inconvenience that was caused was minimised and furthermore, that no party suffered substantive prejudice in the circumstances. In addition, the Comment Period for the Draft EIR was extended to a total of 116 days (ending on 30 June 2010), the extension of which was communicated to all registered I&APs, including those living in Sea Vista. It is the opinion of the EIA Team that the Sea Vista residents were in no way prejudiced as a result of this incident in respect of the opportunity to comment on the Draft EIR.

Day of a meeting

It is correct that a public meeting was held on a Friday evening. The date for that meeting was however selected in advance and in consultation with the community representatives. The feedback that ACER received was that several members of the public did not attend the meeting due to cold weather and rain (it was a relatively cold and rainy day on 16 April 2010 in the greater St. Francis Bay/ Sea Vista/ Cape St. Francis area). It is important to note that dates for meetings have never been imposed unilaterally on the Sea Vista community. On the contrary, ACER always checks the availability of the community to attend a proposed public meeting. In addition ACER always verifies if there are any important community activities which may clash with the proposed meeting date and also ascertains the availability of Sea Vista Community Hall, which is a preferred meeting venue for the Sea Vista residents.



ACER was advised by the community representatives at the beginning of the EIA process that meetings cannot be held on a weekend (Saturday and Sunday) or during the day. In the planning of such stakeholder meetings, the EIA Team has always considered the preferences of Sea Vista community members.

It is also important to point out that it is almost impossible to select a day for a public meeting where all members of the affected community in the area will be available. Given the feedback we have received to date (with the exception of your concerns on behalf of the Sea Vista Forum), ACER is of the opinion that a meeting on the evening of Friday, 16 April 2010 was not unreasonable and was not an unacceptable date for the majority of Sea Vista residents.

Presence of police at meeting

The South African Police Service (SAPS) were present at all public meetings in order to ensure the safety and security of all citizens attending such meetings. To date no Sea Vista community representatives or any other members of the public have submitted concerns regarding the presence of the SAPS at the public meeting. It is a commonly held view within communities that people feel safer to attend such meeting in the presence of law enforcement officers. SAPS and security were present at all of the public meetings held in the area during the week of public participation.

Responding to questions

At the Sea Vista public meetings held in 2010, questions relating to the EIA process were responded to by Arcus GIBB and those relating to Eskom practices and nuclear power station operational matters, were responded to by Eskom (refer to Minutes of Sea Vista Public Meetings [April and May 2010], Issues and Response Report of the Draft EIR, Appendix D6). It is important to note that the Applicant, in this case Eskom, and the Environmental Assessment Practitioner (GIBB) and the I&APs each has a discrete role to play in the public participation process.

It is the EIA Team's opinion that in instances where I&APs do not possess the relevant background knowledge regarding particular Eskom related information (particularly in relation to technical and/or operational requirements of the proposed activity), it is not unreasonable for the Applicant to provide such information and interact with the I&APs, bearing in mind that the EIA process is a transparent and public process.

Translations at meetings

It is correct that an Eskom representative, Mr. Mandla Mbusi, translated the proceedings of the meeting. This issue was raised at the Sea Vista meeting by Mr. Ryan Donnelly (Chairperson, For A Safe Tomorrow) and was opened for discussion. The independent facilitator opened discussion on the issue and different options for addressing this concern were proposed. The response of the majority of members of Sea Vista Community at the time was that they were happy with Mr. Mbusi providing translations from English to Xhosa.

It should be appreciated that translations at public meetings do take a considerable amount of time, therefore efficiency and accuracy in translating the relevant information is important, hence the request for Mr. Mbusi to do the translation. It was agreed with the attendees that Mr. Mbusi would do the translations and if he made any errors, these would be pointed out by attendees of the meeting. There were sufficient members in the audience who would have been able to point out instances of incorrect translation. These included the Public Participation Consultant, Ms. Bongzi Shinga, who is fluent in English and Xhosa. In summary, there was nothing untoward with utilising Mr. Mbusi for the translations. As alluded to above, the main reason for using Mr. Mbusi was that he is well versed with the nuclear power station operational requirements and terminology and is appropriately qualified to provide direct translations that cater for various levels of understanding and literacy.



Given the nature of your client's concern regarding the accuracy of the translations provided at the public meeting, please will you clarify in writing in the requisite level of detail what these perceived inaccuracies are in the circumstances.

Questions about safety of a nuclear reactor

Questions about nuclear safety were answered at the meetings with the Sea Vista community, including issues regarding of monitoring for radioactivity at Koeberg. It has been stated that the proposed power station will be similar in nature to Koeberg, but that the design of Generation III power stations is an improvement over the design of Koeberg, which is several decades old. In recognition of the concerns relating to nuclear safety, and at the request of the Sea Vista residents, the question of safety was further addressed by arranging a site visit to Koeberg to allow Sea Vista and St. Francis representatives to gain first hand experience about the safety measures in place at a nuclear power station, to capacitate them to better understand the issues.

It was also pointed out at the Sea Vista meetings, as at all other public meetings for the EIA process, that the issues relating to the safety of a nuclear reactor would be dealt within the National Nuclear Regulator (NNR) licensing process. As indicated in public forums and in EIA documentation, the separation between the EIA process and the NNR licensing process is based on the legislative provisions of the relevant Acts, namely the National Environmental Management Act (NEMA), 1998 and the National Nuclear Regulator Act (NNRA), 1999, as well as the DEA / NNR co-operative agreement that governs the consideration of radiological issues in EIA processes.

The agreement between the DEA and the NNR indicates that the DEA would not "make a pronouncement on the acceptability" of radiological safety issues, and that this issue falls firmly within the ambit on the NNR licensing process. However, at the DEA's request, information relevant to radiological safety issues has been included in the Draft EIR. Please will you specify in writing what your client's concerns are regarding the safety of the project in order to enable us to ensure that these issues are responded to appropriately as part of the ongoing EIA process.

Eskom's application to the NNR for licensing of the proposed power station in terms of the NNRA has not yet commenced and will only commence once the vendor has been selected. Commencement of this expensive and complicated process in parallel to the EIA process is not practical since NNR cannot issue a nuclear installation license without an identified and confirmed site.

The NNR's licensing process does make provision for public hearings and is subject to the provisions of the Promotion of Administrative Justice Act (Act No. 3 of 2000), as are all authorisation processes to which the public has access. The NNR's process is therefore required to be an open and transparent process.

YOUR COMMENT (2)

Our clients were also extremely concerned about the fact that key documents in the EIA, most notably the Draft Environmental Impact Report (EIR), have only been available in English, while most of the Sea Vista and China Town residents are generally not fluent in English.

Our instructions are that, subsequent to our clients' letter of 28 April 2010, you held a new public meeting in Sea Vista on the evening of 25 May 2010, at which meeting you handed out translations of the Executive Summary of the Draft EIR in Afrikaans and Xhosa. We also understand that the period submitting comments on the Draft EIR has been extended to 30 June 2010.

While our clients appreciate these efforts, they remain concerned about the scope and nature of consultation with the Sea Vista community in this EIA process.



RESPONSE (2)

The EIA Team has endeavoured to ensure that the public participation process undertaken to date has provided I&APs with access to all relevant material as well as several opportunities to discuss in detail any aspects of the Draft EIR or specialist reports in a language of their preference through dedicated Focus Group Meetings or at public meetings in general.

At the various public meetings held at Sea Vista:

- Proceedings at public meetings have been translated from English to Afrikaans and Xhosa.
- An additional public meeting with specialists was arranged and held on 25 May 2010 at the Sea Vista Community Hall. At this meeting, the Social and Marine Specialists presented the findings of their investigations. This meeting was arranged pursuant to the specific concerns and questions raised by I&APs at previous meetings.
- At the public meeting held on 25 May 2010,
 - a) Information from the Marine Specialist was presented in English and translated into Afrikaans and Xhosa.
 - b) Information from the Social Specialist was presented in Afrikaans and translated into English and Xhosa.
- The EIA Team has always encouraged all I&APs including the Sea Vista community to advise the EIA team should there be a need for additional meetings or a need to clarify any issues during the process. Such requests were communicated verbally at all Sea Vista public meetings.
- Copies of Executive Summaries of the Draft EIR were made available in English, Afrikaans and Xhosa to the Sea Vista residents in hard copy and also made available on both websites (www.eskom.co.za and www.gibb.co.za).

It is considered that the abovementioned measures have constituted a procedurally fair and substantively reasonable attempt to ensure the effective participation of the Sea Vista community in the EIA process. However, we note your concerns regarding the scope and nature of consultation with the community in question. In light of that, we shall be grateful if you will describe the perceived deficiencies in the consultation process – to the extent that they are not addressed in this letter – in order to enable us to ascertain what further and additional measures might be required to enhance the participation of the community in the EIA process.

YOUR COMMENT (3)

Firstly, there is still only one hard copy of the Draft EIR and EMP in the entire Sea Vista, St Francis Bay and Cape St Francis Area. We believe that, in the interest of effective consultation, it is reasonable to request Arcus Gibb could make at least one other hard copy of the Draft EIR and EMP available in the Sea Vista community.

Secondly, our clients remain concerned about the way in which the EIA process is predominantly being carried out in English, with key documents in the EIA only available in English. An overview of the project documents available on your website for this project show that only a few documents in the EIA have been made available in any language other than English. Importantly, the two key documents now subject to public comment – the Draft EIR and the Draft Environmental Management Plan (EMP) – are only available in English. The Issues and Response Report, which contains key responses to questions raised by I&APs, is also only available in English.



We have advised our clients that this approach potentially infringes on a number of Constitutional rights, most notably:

- their right to fair administrative action, in that they are effectively denied a clear statement of the proposed administrative action as is required by s.3(2)(b) of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000); and
- their right to equality, in that this approach constitutes unfair discrimination on the ground of ethnic and social origin, colour and language for the purpose of both s.9 of the Constitution and s.6 as read with s.1(XXII)(a) of the Promotion of Equity and the Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000) (PEPUDA).

National environmental legislation also supports the participation of all interested and affected parties in environmental governance, specifically vulnerable and disadvantaged persons.

In the circumstances, we reserve our clients' rights both to challenge the procedural fairness of the EIA process, as well as to exercise their rights and remedies under PEPUDA (which include approaching the Equality Court for relief).

Please advise us urgently whether you:

- will make additional hard copies of the Draft EIR and EMP available to the Sea Vista community;
- whether you will take any additional steps to address the bias of the EIA process towards I&APs fluent in English.

If not, please provide us with reasons for your decision not to do so.

RESPONSE (3)

The EIA Team fully acknowledges the rights afforded to stakeholders to participate effectively in the EIA process. As described above, in Responses 1 and 2 above, the EIA Team believes that its members have made a reasonable effort to provide access to relevant material and to maximise the ability of stakeholders to make meaningful representations during the EIA process, including specifically the participation of stakeholders who have a home language other than English.

Regarding the last two requests, please note the following:

- A hard copy of the Revised Draft EIR and EMP will be made available to the Sea Vista Community during the next stage of the EIA process. An additional two copies of the report will also be placed in St. Francis. Kindly indicate a location in Sea Vista that would be suitable from your client's perspective. Additional copies will also be made available in the broader St. Francis Bay area.
- There will be another public meeting held in Sea Vista during the review period of the Revised Environmental Impact Report. An independent Xhosa translator will be sought, despite the fact that participants at the meetings accepted using the translator and accepted his translation as an accurate reflection of the content of the presentation and of responses to questions from the audience. The use of an Eskom employee as translator ensured that the relevant technical information was accurately communicated and that there was consistency of information in all three languages (English, Afrikaans and Xhosa), as all three team members were familiar with the issues and could check each other's responses.



- The EAP and Public Participation consultants have utilised various means to ensure that the Sea Vista community are well informed, we have also consulted with practitioners in similar projects to determine whether there were any better practices that had proved successful.
- Furthermore, Eskom has taken delegated members of the Sea Vista community on a study tour to Koeberg Nuclear Power Station, at their request, to capacitate them to understand the operation of a nuclear power station so that they can provide more informed feedback to the community about the impacts associated with such a power station.
- **It is therefore requested, through the Centre for Environmental Rights, that GIBB meets with the CER and representatives of the Sea Vista community to better understand the specific information that the community feels has not been provided in the appropriate manner and form to enable the EIA team to address these concerns.**

Given the nature of the project, the complexity of information and dealing with various stakeholder and interest groups, the EIA Team believes that the Public Participation Process to date for Nuclear-1 has been reasonable and complies with the law. In addition, the EIA Team has been guided by DEA's Guideline on Public Participation (2006) to ensure that the specific language needs of participants are addressed and to make provision for illiterate participants.

It is considered unreasonably onerous to require all specialist reports and the entire EIR (the EIR alone is approximately 660 pages) and EMP to be translated into other languages. Furthermore, providing comprehensive translations of EIA-related documentation might not be the most effective means of ensuring the participation of your client in the process. In this regard the approach adopted by the EIA Team is consistent with the guidelines for public participation. It is our professional opinion that effective public participation in the EIA process can be satisfied by other means e.g. translations of Executive Summaries, making translators available at any public meetings to explain the findings of the specialist reports, the content of the draft EMP etc. and to engage with issues or concerns raised by stakeholders who are not fluent in English.

In addition, and insofar as the approach outlined above still does not address your client's reasonable requirements and expectations regarding the public participation process, we would be willing to arrange a further public meeting with your client as part of the EIA process.

Considering the need of the Sea Vista community to receive documentation relevant to them in Afrikaans and Xhosa we expect that you will be providing them with a translation of this communication. If you wish the EAP can translate the answers but would require that you translate your submissions.

Yours faithfully
For Arcus GIBB (Pty) Ltd

Jaana-Maria Ball
Manager: Nuclear-1 EIA

For ACER Africa (Pty) Ltd

Bongi Shinga
PPP Team Leader