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AURORA WIND POWER (RF) PTY LTD Appellant
VREDENBURG WINDFARM (PTY) LTD Respondent
DEPARTMENT OF ENVIRONMENT FORESTRY AND FISHERIES Competent Authority

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RESPONDING STATEMENT

INTRODUCTION

1. Vredenburg Windfarm (Pty) Ltd (hereinafter referred to as "the Applicant" in terms of these appeal proceedings) is the holder of an environmental authorisation issued under DEA reference 14/12/16/3/3/1/2108 in respect of a 132kV sub-transmission line for the proposed Boulders Wind Energy Facility (hereinafter referred to as "the 132kV sub-transmission line").

2. This document is the respondent's response to the appeal lodged by Aurora Wind Power (RF) (Pty) Ltd (hereinafter referred to as "the Appellant") on 7 July 2020 against the decision of the Chief Director: Integrated Environmental Authorisations of the Department of Environmental Affairs (hereinafter referred to as "the Department" and "the Chief Director" respectively).

3. The appeal was lodged by the Appellant in terms of section 43(1) of the National Environmental Management Act 107 of 1998 (hereinafter referred to as "NEMA") read with the National Appeal Regulations (published under GN R933 of 8 December 2014 and hereinafter referred to as the "Appeal Regulations"). In terms of regulation 5 thereof, the Applicant had twenty (20) calendar days from the date of submission of the appeal

in which to submit a responding statement to the Minister. However, such time period has been extended by a further thirty (30) days in terms of section 4.4 of the Directions Regarding Measures to Prevent, Address and Combat the Spread of COVID-19 Relating to National Environmental Permits and Licences in Government Notice 650 published in Government Gazette 43412 of 5 June 2020 and the submission of this responding statement on 29 July 2020 is therefore well within the required time period.

4. Further confirmation that this responding statement has been submitted timeously is to be found in the email that was received by the Applicant from the Department, which email is attached marked as **Annexure 1**, advising that the submission of the responding statement is only due on 27 August 2020.

5. Accordingly, it is hereby confirmed that this responding statement has been submitted by the Applicant timeously.

6. Prior to responding to the Appellant's grounds of appeal on an *ad seriatim* basis, it is deemed necessary to highlight certain concerns that the Applicant has in relation to the current appeal by the Appellant.

7. Although the Applicant recognises the Appellant's right of appeal in terms of section 43 of NEMA read together with the Appeal Regulations, it is notable that the Appellant failed to raise any of the current grounds of appeal during the public participation process that was undertaken on behalf of the Applicant by the independent Environmental Assessment Practitioner. Appendix D6 (Issues and Responses Trail) to the Final Basic Assessment Report (hereinafter referred to as "the FBAR") confirms the above statement and which suggests that none of the grounds of appeal that are now being raised by the Appellant, were deemed to be issues of concern for the Appellant during the public participation process. Attached hereto as **Annexure 2** are the relevant pages from Appendix D6 confirming that the Appellant did not also raise the current issues on appeal during the public participation process.

8. Moreover, the Appellant's appeal regularly conflates the perceived impacts of the development of the 132kV sub-transmission line with the perceived impacts of the development of the Boulders WEF. Separate environmental authorisation processes

were followed by the Applicant in respect of the two proposed developments and the Appellant has had ample opportunity to raise all of its concerns regarding the perceived impacts associated with the development of the proposed Boulders WEF, including the submission of its appeal against the issuing of the environmental authorisation in relation thereto. Thus, it is not appropriate for the Appellant to raise its perceived impacts associated with the Boulders WEF within the ambit of the current appeal process.

9. The manner in which the appeal has been phrased suggests that the Appellant is the owner of the Aurora – Fransvlei 132kV sub-transmission line, that the line was established for its own exclusive use and that the Appellant has a 100% guaranteed connection to the grid at all times. As will become evident from the Applicant's responses to the Appellant's appeal, the Appellant is not the owner of the Aurora – Fransvlei 132kV sub-transmission line, the line was not established for its exclusive use and it does not, in terms of its Power Purchase Agreement (hereinafter referred to as "the PPA") with Eskom, have a 100% guarantee that it will have connection to the grid at all times.

10. For sake of convenience and continuity, this responding statement makes use of the same abbreviations and references as utilised by the Appellant in its appeal.

11. The Applicant will now turn to deal with the Appellant's appeal on an *ad seriatim* basis. Any failure to deal with any allegation made by the Appellant in its appeal must not be taken to be an admission by the Applicant. On the contrary, any allegation not specifically admitted by the Applicant or inconsistent with the contents of this responding statement must be taken to be denied.

Introduction – Ad paragraphs 1 – 6 (pages 1 – 2)

12. Save for denying that the Appellant has any reason for being aggrieved by the Department's decision to grant the Applicant an environmental authorisation for the development of the 132kV sub-transmission line for the proposed Boulders WEF, the remainder of the content of these paragraphs is noted and the Applicant is not required to respond further thereto.

Factual Background (pages 2 – 3)

Ad paragraph 7

13. The content of this paragraph is noted and, given the general nature of the content of such paragraph, the Applicant is not required to respond thereto.

Ad paragraph 8

14. Save for confirming that the existing Aurora – Fransvlei 132kV sub-transmission line is owned, operated and maintained by Eskom and not the Appellant, the remainder of this paragraph is admitted.

Ad Paragraph 9

15. The content of this paragraph is noted and it is admitted that the Appellant has also submitted an appeal against the issuing of the environmental authorisation for the development of the proposed Boulders WEF. The Applicant has submitted detailed responses to each one of the grounds of appeal that was raised by the Appellant, including the wake effect impacts, and which appeal is currently being considered by the Honourable Minister.

Ad Paragraph 10

16. The content of this paragraph is noted.

Grounds of Appeal (page 3)

Ad Paragraph 11

17. It is denied that the possible adverse environmental impacts of the proposed Boulders WEF have not been assessed as required by the EIA Regulations. Such impacts were assessed as part of the separate Boulders WEF EIA application process that resulted in

the Applicant being issued with an environmental authorisation, which, as indicated above, is the subject matter of another appeal by the Appellant.

18. In any event, the current environmental authorisation was issued for the development of a 132kV sub-transmission line and the perceived impacts of the proposed Boulders WEF are therefore irrelevant to the present appeal.

19. It is further denied that it was incorrect and/or impermissible for the Applicant to separate the environmental authorisation application processes for the proposed Boulders WEF and the 132kV sub-transmission line.

20. While the Appellant fails to advance any legal argument or cite any provisions of NEMA in support of such allegation, it is notable that there are sound and acceptable reasons which justify the separation of the two environmental authorisation application processes.

21. The Appellant, as an Independent Power Producer (hereinafter referred to as an "IPP) itself, is well aware that it is, for practical planning reasons, common practice for the development of the sub-transmission lines and grid connections to fall under a separate environmental authorisation application to the environmental authorisation application for a WEF. The reason being, is that such electrical infrastructure is actually owned and operated by Eskom and not the IPP and any environmental authorisation in relation thereto will eventually be transferred into the name of Eskom so that it can operate the infrastructure in accordance with the conditions of the environmental authorisation.

22. As Eskom is, and always will be, the owner of the substations and transmission lines on all electricity generation sites, including renewable energy sites, all IPPs, including the Applicant, are faced with two options when planning for the development of such electrical infrastructure.

23. First, an IPP can rely on Eskom to apply for all licences, permits and authorisations, including an environmental authorisation, required for the development of the electrical infrastructure, to build such infrastructure and then to own and operate the same.

24. Second, an IPP can, itself, apply for all licences, permits and authorisations, including the environmental authorisation associated with the required electrical infrastructure, self-build the authorised electrical infrastructure and, once construction is complete, hand over the infrastructure to Eskom and transfer all licences, permits and authorisations to Eskom for the lawful operation and maintenance thereof.

25. The omnipresent risks associated with an IPP adopting the first option above are self-evident in so far as the process of, and costs associated with applying for and obtaining all required licences, permits and authorisations are out of the IPPs control. In addition, the construction of the electrical infrastructure is also beyond the control and management of the IPP. Such lack of control at all such phases has obvious potential time and cost ramifications and could result in significant project overruns for a WEF project which is a risk that most IPPs are not willing to accept, particularly when the process can be managed by themselves.

26. Even the Department of Mineral Resources and Energy (hereinafter referred to as "the DMRE") has previously recognised the risks of placing responsibility in the hands of Eskom for applying for the required licences, permits and authorisations and then managing the construction of the electrical infrastructure required for a WEF. Such risk was identified by the DMRE in so far it did not, for the very reasons highlighted in paragraph 25 above, require an electrical infrastructure environmental authorisation to be submitted as part of the bid process in the fourth bid window under the Renewable Energy Independent Power Producer Procurement Programme (hereinafter referred to as "REIPPPP").

27. Consequently, in order to reduce the known risks with option one above, the separation of the EIA processes for the development of WEFs and for the development of the associated electrical infrastructure has, for practical planning reasons, become standard and accepted practice in the renewable energy sector.

28. It is therefore denied that the Applicant erred in separating the environmental authorisation application processes for the development of the proposed Boulders WEF and the proposed 132kV sub-transmission line.

Ad Paragraph 12

29. It is denied, for reasons that will be more apparent from the Applicant's responses to each ground of appeal raised by the Appellant, that the Department's decision to grant the environmental authorisation is legally indefensible on the basis that it failed to apply the principles and provisions of NEMA.

Failure to Assess Impact on Socio-Economic Conditions - Ad paragraphs 13 to 16 (pages 3 – 4)

Ad Paragraph 13

30. It is admitted that a key and fundamental objective of the EIA process is to identify and predict the actual or potential impact that a proposed project will have on *inter alia* socio-economic conditions. It is nonetheless denied, for the reasons that are provided for hereinunder, that the proposed grid connection will have any impact on the feasibility of the existing WC1 WEF.

31. In any event, and as will become clear from the responses to follow, the Applicant has, in accordance with the prescripts of NEMA and the EIA Regulations, investigated all applicable impacts associated with the grid connection, including certain of the impacts that have been raised by the Appellant on appeal.

Ad Paragraph 14

32. It must be recognized that the Appellant, without providing any factual basis, makes a broad and unsubstantiated assertion that the proposed layout of the 132kV sub-transmission line, if implemented, will adversely impact the viability and sustainability of the WC1 WEF. Even though such potential impact remains unsubstantiated, the Applicant denies that such impacts will occur.

33. Even the Appellant must recognise that the proposed layout of the 132kV sub-transmission line, and any perceived impacts associated therewith, will not jeopardize the viability and sustainability of the WC1 WEF. Such turn of phrase has been

deliberately used by the Appellant to convey a false sense of gravitas to such impacts that will either not occur, or will not occur to the extent that the viability and sustainability of the WC1 WEF will be jeopardized.

34. In support of its ground of appeal in this regard, the Appellant makes a loose reference to the judgement in the *Fuel Retailers* case, but fails to cite such case or draw a connection between any material outcome of such case to its ground of appeal.

35. The Appellant cannot assume that a mere reference to the *Fuel Retailers* case is sufficient to link, in its favour, any outcome of such case in support of its current ground of appeal. In the absence of such link, any reliance that the Appellant has purported to place on the outcome of the *Fuel Retailers* case must be disregarded by the Honourable Minister.

36. It is further not permissible for the Honourable Minister to independently determine the outcome of the *Fuel Retailers* case and to determine how it may, or may not, support the Appellant's ground of appeal.

37. It is therefore denied that the Appellant has made out a case as to why the outcome of the judgement in the *Fuel Retailers* case is applicable to, and in favour of, its ground of appeal and such ground of appeal should therefore be dismissed.

Ad Paragraph 15

38. Despite the above failings of the Appellant's appeal, it is nonetheless denied, for the reasons provided at paragraphs 56 to 69 below, that there will be any reduction in revenue of the Appellant and the grid connection will thus not threaten the viability and sustainability of the WC1 WEF and will also not cause indirect impacts on the Appellant's ability to invest in SED community projects and to distribute dividends to shareholders. In fact, as will be seen, the ability to connect the Boulders WEF to the grid will have an overwhelming positive socio-economic benefit for the nearby communities.

39. It is further denied, as is suggested by the Appellant, that such indirect impacts can also be attributable to wake effect impacts caused by the implementation of 132kV sub-transmission line.

40. The Applicant denies that the implementation of the proposed 132kV sub-transmission line will cause a wake effect impact on the WC1 WEF and it will further not have any concomitant impact on the Appellant's socio-economic commitments as alleged herein.

41. Even if 132kV sub-transmission lines do cause wake impacts (they don't), the Appellant has failed to show how the proposed 132kV sub-transmission line will, in this instance, cause a wake impact on the WC1 WEF and has further failed to provide any indication as to the extent of such wake effect impact.

42. While it is denied that there will be any indirect socio-economic impacts caused by the grid connection and / or wake effect impacts, it is notable that the Appellant has failed to quantify such indirect socio-economic impacts in its appeal and, most importantly, its appeal fails to acknowledge the inescapable and overriding direct socio-economic benefits that would accrue if the proposed 132kV sub-transmission line is implemented in order to allow the existing WC1 WEF and the proposed Boulders WEF to operate concurrently.

43. The direct positive socio-economic benefits that would accrue as a result of the development of the proposed 132kV sub-transmission line to allow the Boulders WEF to operate must be regarded as significant and satisfactory mitigation of any possible indirect negative socio-economic impacts (there are none) that may be associated with the grid connection and/or wake effect, including negative impacts on dividends available for distribution to the Appellant's shareholders as well as funds available for contributions by the Appellant towards SED projects.

44. Moreover, even if the Appellant's overall shareholder dividends and SED contributions are reduced (they won't as a result of grid connection impacts and /or wake effect impacts), this does not result in a breach of any contractual obligations or commitments owed by the Appellant to the DMRE as such dividends and contributions are based on a

percentage of turnover of the WC1 WEF and not on a specific contractually predetermined monetary amount.

45. As such, the Applicant denies that the proposed 132kV sub-transmission line will have the indirect socio-economic impacts as identified by the Appellant and the Applicant therefore kindly requests the Honourable Minister to dismiss this allegation.

Ad Paragraph 16

46. As alternative relief, the Appellant requests that the environmental authorisation be varied on appeal to include a condition requiring the Applicant to compensate it for any losses due to the grid connection effects of the Boulders WEF.

47. First, it is denied, for the reasons provided in general herein and also for the more specific reasons provided at paragraphs 56 – 69 below, that the connection of the Boulders WEF to the grid via the proposed 132kV sub-transmission line will have any financial or other direct or indirect impact on the WC1 WEF.

48. Second, it is further denied that the Honourable Minister is empowered to, in terms of section 43(6) of NEMA, amend an environmental authorisation on appeal to include a condition requiring the Applicant to financially compensate the Appellant for any losses it may suffer.

49. Even if such condition were to be included within the ambit of the environmental authorisation, the Applicant would certainly have the right to appeal against such decision and, if unsuccessful, take such decision on judicial review for being ultra vires the Honourable Minister's powers.

50. It is therefore respectfully submitted that the Appellant's alternative relief should also be dismissed.

Grid connection impacts - Ad paragraphs 17 to 27 (pages 4 – 6)

Ad Paragraph 17

51. It is admitted that the Applicant conducted separate EIA processes for the development of the Boulders WEF and now for the development, routing and connection of the 132kV sub-transmission line to the grid. It is nonetheless, denied, for the reasons more fully set out in paragraphs 21 to 27 above, that it was procedurally incorrect for the Applicant to do so.

Ad Paragraph 18

52. The reasons why the routing of the 132kV sub-transmission line will not have an impact on the WC1 WEF are fully addressed by the Applicant in its response to each of the perceived impacts raised by the Appellant in its appeal. Nonetheless, and to the extent that certain impacts may occur, the Applicant denies that any such impacts remain unaddressed and/or unresolved by the EIA process that was undertaken.

Ad Paragraphs 19

53. The Appellant claims that the EIA application process that was followed by the Applicant was defective on the basis that the separation of the Boulders WEF EIA application and the 132kV sub-transmission line EIA application has resulted in impacts not being assessed. It is denied, for the reasons to follow that the EIA application process followed by the applicant was defective.

54. It is further denied that the separation of the two EIA application processes has resulted in a failure by the Applicant to assess impacts associated with the development of the 132 kV sub-transmission line. The Appellant's perceived grid connection impacts and the purported impact on its ability to export generation capacity have been comprehensively responded to by the Applicant throughout this response, thereby confirming that all relevant impacts were assessed by the Applicant during the EIA process.

55. Regarding any possible failures to assess impacts associated with the development of the Boulder's WEF (there were no such failures), this is the subject matter of another appeal by the Appellant and which appeal is currently under consideration by the Department.

Ad Paragraph 20

56. It is admitted that the grid connection will result in a shutdown of the Fransvlei substation. However, the Appellant, as the operator of an existing WC1 WEF, is well aware that the shutdown of the Fransvlei substation to allow for the connection of the Boulder's WEF to the grid will only be for a very limited period of time of approximately 4 (four) hours with a further maximum of 3 days required for Optical Ground Wire (hereinafter referred to as "OPGW") commissioning.

57. While it is admitted that there will be a limited shutdown of the Fransvlei substation to allow for the grid connection and OPGW commissioning, it is denied that such shutdown will impact the Appellant to the extent that it will result in a significant loss of revenue. In fact, the shutdown will, for the reasons to follow, not result in any loss of revenue for the Appellant at all.

58. The reason why the shutdown of the Fransvlei substation will not have an impact on the Appellant's revenue is to be found within the very content of the PPA that all successful bidders in Bid Window 2, including the Appellant, were required to sign with Eskom. A copy of the final version of the template PPA for Bid Window 2 is attached hereto as **Annexure 3**.

59. The PPA makes specific provision at clause 1.1 thereof for an "*Allowed Grid Unavailability Period*" which is defined in the PPA to mean:

"(b) where the Facility is connected to the Distribution System, a period of 438 hours in every Contract Year, and reduced for the first and last Contract Year to reflect the proportion which the number of days in that first or last Contract Year bears to three hundred and sixty five point two five (365.25) days"

60. In other words, the PPA that the Appellant signed with Eskom specifically provides that the WC1 WEF will not have access to the grid for 438 out of 8760 hours in a contract year. Put differently, the Appellant does not have access to the grid for 5% or 18.25 days of the year.

61. While the time required to connect the proposed Boulders WEF to the grid can be easily accommodated within the 18.25 days provided for in the "*Allowed Grid Unavailability Period*" of the PPA.

62. Such lack of access to the grid would have been known to the Appellant and taken into consideration when modelling the bankability of the WC1 WEF. Moreover, the unavailability of the connection of WC1 WEF to the grid as stipulated in the PPA would have been modelled in the Appellant's audited financial models during financial close and would therefore have been thoroughly considered as a minimum for financial feasibility for all aspects of the WC1 WEF, including its SED commitments.

63. Should the Appellant's availability reduce to a point where the 18.25 days is, for whatever reason, exceeded, then any claim that the Appellant may have would be against Eskom and not against the Applicant as the PPA, at clause 14 thereof, makes allowance for compensation payable by Eskom should certain events occur

64. Regarding the Appellant's concerns associated with possible electro-magnetic impacts that may be caused by the proposed 132kV sub-transmission line on the existing Aurora – Fransvlei 132kV sub-transmission line, the Appellant provides no factual basis in its appeal to confirm how, or why, such electro-magnetic impact may occur and the harm that it would suffer in relation thereto. It is nonetheless denied that such impact will occur.

65. Moreover, such concerns are based on the incorrect premise that the Aurora – Fransvlei 132kV sub-transmission line is the Appellant's own sub-transmission line. Consequently, even if such electro-magnetic impact were to occur (it won't), this would not cause WC1 WEF a loss of energy and a resultant financial impact on the Appellant.

66. The above assertion is made on the basis that the Aurora – Fransvlei 132kV sub-transmission line is Eskom's line and not the Appellant's. Any possible loss of energy on the line would therefore be suffered by Eskom and not the Appellant.

67. The Appellant would also not suffer a financial impact due to any loss of energy on the Aurora – Fransvlei 132kV sub-transmission line as its Delivery Point (the physical point, situated on the high voltage side of the generator transformer of the WC1 WEF,

where the WC1 WEF connects to the system and where the energy generated by the WC1 WEF is delivered by the Appellant to Eskom) is at the Fransvlei substation and not at any other point after the energy has entered the Aurora – Fransvlei 132kV sub-transmission line.

68. Clause 5.1.2 of the PPA confirms that Eskom pays the Appellant based on the amount of energy delivered by the WC1 WEF to the Delivery Point. In addition, clause 12.2.1 of the PPA confirms that the WC1 WEF metering installation is installed at the Delivery Point and that such metering equipment is, in terms of clause 12.2.2, used for invoicing purposes. Consequently, and to the extent that such impact may occur, there can be no doubt that any possible financial impact due to electro-magnetic effects would be suffered by Eskom and not the Appellant.

69. It is notable that Eskom, the entity that could possibly suffer the harm (it won't) referred to by the Appellant herein, did not oppose the EIA application and has further not appealed the decision by the Department to grant the environmental authorisation. It goes without saying that the Appellant does not have any *locus standi* to act or speak on behalf of Eskom and has, in any event, laid no factual basis for any harm that may be suffered by Eskom. The Appellant's appeal should therefore be evaluated in terms of its interests alone which would, evidently, not be harmed as a result of any possible electro-magnetic effect.

70. It is therefore further denied that the EIA process for the Boulders WEF was defective and deficient and it is hereby submitted that the issues raised on appeal by the Appellant relating to the grid connection impacts should be dismissed.

Ad Paragraph 21

71. It is, for the reasons provided at paragraphs 21 to 27 above, denied that the separation of the two environmental authorisation processes is without merit. In fact, there are practical and justifiable reasons as to why it is, for the purposes of renewable energy projects, defensible to separate the two EIA applications.

72. It is therefore further denied in accordance with the various responses provided to the Appellant's appeal, that that Applicant has failed to comply with prescribed minimum assessment requirements as stipulated in sections 23 and 24 of NEMA.

Ad Paragraph 22

73. It is admitted that the Appellant's concerns regarding the 132kV sub-transmission line would not arise but for the proposed WEF. However, as has already been shown and will further be shown in the Applicant's responses to follow, the impacts raised by the Appellant on appeal do not represent serious and valid concerns associated with the proposed 132kV sub-transmission line. The majority of the concerns raised by the Appellant simply will not materialize and those that may materialize, are not significant, have been investigated and assessed and can be satisfactorily managed and mitigated in accordance with the prescripts of the conditions in the current environmental authorisation and / or the mitigation measures provided for in the EMPr.

74. It is therefore submitted that the Applicant did assess most of the Appellant's concerns either during the EIA application for the 132kV sub-transmission line and / or in the EIA process for the Boulders WEF.

75. To the extent that certain concerns have not been assessed, it is submitted that there was no obligation on the Applicant to do so as such concerns do not have any associated impact. It is therefore denied that the EIA process for the 132kV sub-transmission line was defective and deficient.

Ad Paragraph 23

76. It is denied, in so far as the Appellant suggests that the impacts from the development of the proposed 132kV sub-transmission line, which impacts the Appellant perceives to be specific to it, should have been afforded special treatment and dealt with in the environmental impact assessment process associated with the development of the proposed Boulders WEF.

77. The practical and justifiable reasons for separating the two environmental authorisation application processes has already been dealt with in detail at paragraphs 21 to 27 above. It is, for such reasons, denied that the Appellant's perceived impacts associated with the development of the proposed 132kV sub-transmission line should have been dealt within in the EIA application process for the development of the proposed Boulders WEF.

Ad Paragraph 24

78. Firstly, it is denied that the proposed shared Boulders and Eskom 132kV substation facility was authorised in terms of the environmental authorisation that forms the subject matter of the Appellant's current appeal. The development of such 132kV substation facility was approved in terms of the separate environmental authorisation (Ref. no. 14/12/16/3/3/2/1057) which was granted to the Applicant by the DEA on 14 January 2020 in respect of the development of the Boulders WEF. Thus, it appears that the Appellant has incorrectly conflated the two environmental authorisations.

79. Whether the conflation of the two environmental authorisations was intentional or not, it is submitted that the time period for the Appellant to submit an appeal in relation to the environmental authorisation for the development of the 132kV substation facility has elapsed.

80. Furthermore, it is not permissible for the Appellant to belatedly raise such ground of appeal via the current appeal process, as such ground of appeal is unrelated to the current decision by the Department to grant the environmental authorisation. It is therefore respectfully submitted that this ground of appeal should be dismissed on this basis alone.

81. Secondly, even if it is possible (it is not) for the Appellant to raise grounds of appeal that are not relevant to the decision that forms the subject matter of its current appeal, it must be noted that the Appellant grossly exaggerates the proximity of the proposed shared Boulders and Eskom 132kV substation to the WC1 WEF. It is therefore submitted that the perceived impact is not relevant to the environmental authorisation which has been granted by the Department.

82. In any event, the reasons why an increase in traffic on the dirt roads will not have an impact on the Appellant, alternatively, to the extent that such impacts may occur, the basis upon which such impacts can, in terms of the environmental authorisation and the EMPr, be satisfactorily managed or mitigated, have been fully addressed at paragraph 84 – 89 below.

Ad paragraph 25

83. The Appellant, at para 25 of its appeal, conflates the development of the proposed Boulders WEF with the development of the 132kV sub-transmission line. While it is impermissible for the Appellant to raise issues relating to the development of the proposed Boulders WEF in this appeal, it is denied, for the reasons to follow, that the development of the 132kV transmission line will have a direct and cumulative dust impact on the WC1 WEF substation and O&M buildings.

84. The Appellant further claims that the dust impact will exacerbate the problems already being experienced by WC1 WEF with dust deposits. The Appellant's assertion in this regard remains unsubstantiated in so far as it fails to specify the problems that are supposedly being experienced, and it further fails to provide any factual basis for any harm that it may presently be suffering as a result thereof.

85. Despite the above failings associated with the Appellant's appeal, the literature that the Appellant has relied upon in relation to this ground of appeal is noted, although it is submitted that the Appellant has failed to link the findings in such literature to any problems that it may currently be experiencing. However, it is denied that an increase in traffic on the applicable dirt road will result in an abnormal ingress of dust into the substation buildings.

86. Such abnormal ingress will not occur as the dust generated by traffic travelling on the dirt road will not, based on the dominant southerly wind direction of the area, be blown towards the WC1 WEF substation and the O&M buildings. Even if dust is, by chance, blown in the direction of the WC1 WEF substation and the O&M buildings, any impact that may be caused thereby can be satisfactorily mitigated by the below identified measures provided for in the EMPr. Such possible impacts would be further negated by

the distance that such structures are from the dirt road which is, at its nearest point, over 1.4km away.

87. The above lack of dust impact was assessed during the EIA process and the Impacts Table attached as Appendix B to the FBAR (attached hereto as **Annexure 4**) confirms, on page 6 thereof, that the Temporal Scale of the assessed dust impacts will be "*Short term*", that the Severity of Impact will be "*Slight*" and the Likelihood of dust impacts occurring was assessed to "May occur". In response to such assessment is was recommended by the independent Environmental Assessment Practitioner that the minimal impacts associated with "*Fugitive/nuisance dust could be reduced by implementing the following: ·*

- *Watering down of unsurfaced and cleared areas during windy conditions (non-potable water should be used for this);*
- *Retention of vegetation where possible;*
- *A speed limit of 40km/h must not be exceeded on dirt roads;*
- *Any complaints or claims emanating from the lack of dust control should be attended to immediately by the Contractor*".

88. Similar mitigation measures to those above were repeated on page 27 of the EMPr (attached as Appendix E to the FBAR) with the addition of further mitigation measures including the need for "*Monitoring of nuisance dust and dampening when required*". The EMPr (at pages 44 and 48) further calls for the imposition of minimum fines of R1000 or maximum fines of R2 000 on contractors that cause excess dust to emanate from site or who drive vehicles in excess of designated speed limits.

89. Consequently, the manner in which the possible impacts associated with dust were assessed in the FBAR and catered for in the EMPr are commensurate with the minimal impact that may occur.

Ad Paragraph 26

90. The Appellant yet again conflates the development of the Boulders WEF with the development of the 132kV sub-transmission line.

91. It is therefore denied that there is any potential for a dustfall impact from the development of the proposed Boulders WEF that was required to be identified and assessed during the BA process for the 132kV sub-transmission line.

92. Nonetheless, and to the extent that there will be an increase in traffic on the dirt road that will be used by contractors to access the site for the development of the 132kV sub-transmission line, the reasons why such dust impacts will be minimal or non-existent and have been adequately assessed and addressed by the Applicant are already dealt with at paragraphs 84 - 89 above.

Ad Paragraph 27

93. It is denied that the BA and EMPr are unacceptably vague in identifying site specific measures to avoid and / or mitigate dust emission levels. The manner in which dust emissions have been dealt with in the BA and the EMPr is directly commensurate with the minimal impact that such emissions will have.

94. Nonetheless, and to the extent that the Minister is of the opinion that the BA and EMPr are vague in this regard, this does not result in the BA process, and the subsequent decision by the DEA to issue the environmental authorisation, being fatally flawed, and it certainly does not warrant the setting aside of the environmental authorisation.

95. To the extent that the Honourable Minister agrees with the Appellant in relation to its grounds of appeal in relation to dust impacts, the Minister has the administrative power to, in terms of section 43(6) of NEMA, vary any provision or condition of the environmental authorisation on appeal. It is therefore respectfully submitted that the appropriate remedy under the circumstances would be for the Minister to, to the extent necessary, vary any appropriate condition of the environmental authorisation.

96. Furthermore, and considering the EMPr is not yet approved, the Applicant can still amend its EMPr to cater for any amendments made to the environmental authorisation by the Hounorable Minister on appeal. Any such amendments to the EMPr will, as per condition 16 of the environmental authorisation, undergo further public participation in due course.

Conclusion - Ad paragraphs 28 to 30 (page 6)

Ad Paragraph 28 (inclusive of paras 28.1 and 28.2)

97. It is denied, for the various responses provided by the Applicant herein, that the Department's decision to issue the environmental authorisation falls to be set aside on the basis of the grounds of appeal raised by Appellant.

Ad Paragraph 29

98. It is denied that the purpose of the EIA application process is to quantify potential impacts but that it is rather to, amongst other purposes, assess and to, where necessary, provide satisfactory measures to manage and mitigate against any unavoidable impacts that may arise.

99. The Applicant did not assess the direct and cumulative socio-economic impacts identified by the Appellant in this appeal as such impacts will not occur for the reasons provided for at paragraphs 38 to 45 read together with paragraphs 56 to 69.

100. It is therefore denied that there is a serious deficiency in the EIA process. The Department's decision is, with reference to the principles and provisions of NEMA, legally defensible.

Ad Paragraph 30

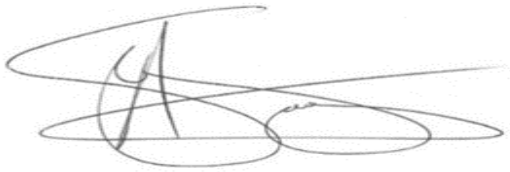
101. It is denied that the Appellant has presented any good reason why the decision to issue the environmental authorisation should be remitted back to the Department for reconsideration based on the Applicant first supplementing the BA process with the necessary and relevant information to address the Appellant's grounds of appeal.

102. The Applicant has shown in this response that the perceived impacts will either not materialize, alternatively have already been adequately addressed by the Applicant in the FBAR and the EMPr.

103. The EIA process and BAR that was undertaken was sufficiently comprehensive to address the key aspects of sustainable ecological, social and economic development relating to and influenced by the development and operation of the 132kV sub-transmission line. Moreover, it is submitted that the layout of the sub-transmission line approved in terms of the EA reflects the "most practicable environmental option" under the circumstances.

104. It is therefore respectfully submitted that the Appellant's appeal should be dismissed.

Signed at **ROSEBANK** on this **29th** day of July 2020



WARBURTON ATTORNEYS

per Alistair Young (duly authorised on behalf of Vredenburg Wind Farm (Pty) Ltd)