



**MINISTER
FORESTRY, FISHERIES AND THE ENVIRONMENT
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 195633

APPEAL DECISION

**APPEAL AGAINST AN ENVIRONMENTAL AUTHORISATION GRANTED FOR THE
PROPOSED 132 KV SUB-TRANSMISSION LINE LOCATED WITHIN AND ADJACENT
TO THE PROPOSED BOULDERS WIND ENERGY FACILITY IN THE SALDANHA BAY
LOCAL MUNICIPALITY, WITHIN THE WEST COAST DISTRICT MUNICIPALITY, IN
WESTERN CAPE PROVINCE**

Aurora Wind Power (RF) (Pty) Ltd

Appellant

Vredenburg Wind Farm (Pty) Ltd

Applicant

Department of Environment, Forestry and Fisheries

Competent Authority

Appeal: This is an appeal submitted by Mr Diemont, on behalf of Aurora Wind Power (RF) (Pty) Ltd (the appellant), against the decision of the Chief Director: Integrated Environmental Authorisations of the Department of Environment, Forestry and Fisheries (the Department) to grant an environmental authorization (EA) to Vredenburg Windfarm (Pty) Ltd (the applicant) on 08 June 2020, in respect of the proposed 132 KV sub-transmission line located within and adjacent to the proposed boulders wind energy facility

in the Saldanha Bay Local Municipality, within the West Coast District Municipality, in Western Cape Province.

1. BACKGROUND AND APPEAL

- 1.1 On 13 November 2019, the applicant lodged an application for an EA with the Department for the proposed 132 KV sub-transmission line located within and adjacent to the proposed boulders wind energy facility in the Saldanha Bay Local Municipality, within the West Coast District Municipality, in Western Cape Province.
- 1.2 The applicant commissioned an independent environmental consultancy, namely Coastal and Environmental Services (CES), to conduct an Environmental Impact Assessment (EIA) for the abovementioned application. The final Basic Impact Assessment (BAR) and the Environmental Management Programme (EMPr) were received by the Department on 11 February 2020. After evaluating the final BAR and EMPr, the Department decided to grant an EA to the applicant on 08 June 2020.
- 1.3 Subsequent to the abovementioned decision of the Department, the Directorate: Appeals and Legal Review (Appeals Directorate) within the Department received an appeal from the appellant on 07 July 2020. Registered interested and affected parties (I&APs) were notified of the aforesaid decision on 17 June 2020. Considering the provisions of regulation 4 of the National Appeal Regulations, 2014 (2014 Appeal Regulations), the appeal was lodged timeously on 07 July 2020.
- 1.4 The appellant owns and operates the approved West Coast One WEF (WC1), comprising of 47 wind turbines and generating 94 MW. WC1 has been commercially operational since June 2015.
- 1.5 As per regulation 5 of the 2014 Appeal Regulations, read with the Directions issued on 05 June 2020 in terms of the Regulations issued in terms of section 27 (2) of the Disaster Management Act, 2002 (Act No. 57 of 2002), the response to the appeal was due to be

submitted on or before 27 August 2020. On 29 July 2020, the applicant timeously submitted their responding statement.

1.6 A copy of the appeal was also provided to the Department so as to source comments on the grounds of appeal. These comments were thereafter received by the Appeals Directorate on 27 August 2020.

1.7 The appeal is premised on the following grounds:

1.7.1 Adverse impacts were not assessed, and

1.7.2 The grid impacts should not have been separated from the Wind Energy Facility (WEF).

2. EVALUATION

2.1 *Adverse impacts were not assessed*

2.1.1 The appellant contends that the Department's decision is legally indefensible as it failed to apply the principles and provisions of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA). The appellant contends that a key and fundamental objective of the EIA process is to identify and predict the actual or potential impact on socio-economic conditions, including the impact of the proposed grid connection on the feasibility of the existing WC1 WEF. The appellant argues that if the proposed 132 KV transmission line is implemented as per the current layout authorised by the Department, this will adversely affect the viability and sustainability of the WC1 WEF.

2.1.2 The appellant further contends that the potential socio-economic impacts also gives rise to indirect impacts. The appellant states that one of the investors in the WC1 WEF is a community trust and the amount available for distribution to shareholders, including the community trust would decrease by the same Rand value as the reduction in revenue caused by the wake effect impacts, thus impacting on the viability and sustainability of the WC1 WEF. The appellant proposes that they be compensated for any loss due to the grid

connection effects of the Boulders WEF and that such compensation must be catered for in the authorisation.

- 2.1.3 In response to this ground of appeal, the applicant submits that they have, in accordance with the prescripts of NEMA and the Environmental Impact Assessment Regulations, 2014, as amended (2014 EIA Regulations), investigated all applicable impacts associated with the grid connection. The applicant states that the proposed layout of the 132 KV sub-transmission line and any perceived impacts associated therewith, will not jeopardize the viability and sustainability of the WC1 WEF. The applicant states that the appellant is conveying a false sense of gravitas that 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.
- 2.1.4 The applicant states that the proposed power lines will not cause indirect impacts on the appellant's ability to distribute dividends to shareholders but rather the ability to connect the Boulders WEF to the grid, will have an overwhelming positive socio-economic benefit for the nearby communities.
- 2.1.5 In their comments on this ground of appeal, the Department states that two separate applications were lodged with the Department, one for the Boulders WEF and another for the associated 132 KV sub-transmission line. According to the Department, the adverse impacts for sub-transmission line were adequately assessed. The Department explains that for the proposed sub-transmission line, five route alternatives were proposed. According to specialist input, route alternative 3 was identified as the preferred route whereas the other route alternatives were considered unfavourable after considering the outcome of the ecological, wetland and avifauna assessments.
- 2.1.6 In evaluating this ground of appeal and responses thereto, I note from the information before me that the following specialist studies formed part of the final BAR:
- 2.1.6.1 Ecological Impact Assessment;
 - 2.1.6.2 Aquatic Impact Assessment;
 - 2.1.6.3 Avifaunal Impact Assessment;

2.1.6.4 Heritage Impact Assessment; and

2.1.6.5 Social Impact Assessment.

2.1.7 The information before me suggests that the Department considered the recommendations of each of the abovementioned assessments before taking a decision to approve the EA application for the proposed 132 KV sub-transmission line. I am of the view that the environmental impacts associated with the proposed 132 KV sub-transmission line has been adequately assessed.

2.1.8 I have noted that the appellant's concern lies with the potential adverse socio-economic impacts associated with the proposed project. However I find that the appellant's concerns stem from the socio-economic impacts associated with the proposed Boulders WEF and not the proposed 132 KV sub-transmission line. The Department granted a separate EA for the Boulders WEF under reference number: 14/12/16/3/3/2/1057. The EA for the Boulders WEF was under a separate pending appeal process. I have already adjudicated on the appeals lodged against the proposed Boulders WEF. In my adjudication of the Boulders WEF, I ruled that a wake impact assessment is required for the proposed Boulders WEF and the wake effects of the proposed WEF is a relevant factor to be considered by the Department. The applicant was accordingly directed to commission an independent expert to conduct a wake impact assessment in respect of the proposed project, which report will thereafter be subjected to a public participation in accordance with the 2014 EIA Regulations.

2.1.9 The appeal at hand relates to the associated 132 KV sub-transmission line. I am not convinced that this proposed development is likely to have a concomitant impact on the appellant's socio-economic commitments as alleged.

2.1.10 Based on the above, I am inclined to conclude that the potential impacts associated with the proposed 132 KV sub-transmission line have been adequately assessed. As a result thereof, this ground of appeal is accordingly dismissed.

2.2 ***The grid impacts should not have been separated from the WEF***

- 2.2.1 According to the appellant, the separate consideration and assessment of the Boulders WEF and the grid connection impacts, has resulted in a defective assessment process. The appellant contends that the defensibility of separating the EIA process for the proposed Boulders WEF and grid connection is without merit and the result is that the EIA has failed to evaluate and assess a key project-related impact.
- 2.2.2 The appellant contends that the separate basic assessment process for the sub-transmission line does not deal with and/or assess the impact of interference with grid connection of the proposed Boulders WEF on the existing WC1 WEF. The appellant contends that the basic assessment for the sub-transmission line also fails to address the adverse effect this connection will have on the ability of the WC1 WEF to export generation capacity, which is a critical issue of concern within the receiving environment.
- 2.2.3 The appellant raises concern that the adverse impact of grid interference on the sustainability of existing WC1 WEF is anticipated to result in the substation being shut down for a period of time. It is contended that because the shut down for the grid connection has not been considered in the BAR, the appellant is unable to determine the revenue loss which WC1 WEF will suffer as a result of the loss of production days. In addition, the appellants contends that the electro-magnetic impact of the Boulders WEF transmission line on the existing transmission line of the WC1 WEF has not been investigated, evaluated or assessed.
- 2.2.4 The appellant also contends that the proposed 132 KV facility substation, as well as the existing Eskom 132 KV connecting substation, are located directly adjacent to the WC1 WEF which will result in a substantial increase in traffic on the dirt road and cause a significant increase in dust generated. The appellant state that the direct and cumulative effect of this dust generated by the proposed Boulders WEF transmission line will exacerbate the problems already being experienced by WC1 WEF with dust deposits. It is contended that the BAR is unacceptably vague in identifying site specific measures to be implemented to avoid and/or mitigate dust emissions levels during the construction phase.

- 2.2.5 In response to this ground of appeal, the applicant denies that the separation of the two EIA application processes has resulted in a failure to assess impacts associated with the development of the 132 KV sub-transmission line. The applicant contends that 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.
- 2.2.6 The applicant explains that the grid connection will result in a shutdown of the existing Fransvlei substation. The applicant states that the appellant is well aware of the shutdown of the Fransvlei substation. According to the applicant, this shutdown is to allow for the connection of the Boulder's WEF to the grid and will only be for a very limited period of time of approximately four (04) hours, with a further maximum of 3 days required for Optical Ground Wire commissioning.
- 2.2.7 Regarding the appellants concerns associated with possible electro-magnetic impacts that may be caused by the proposed 132 KV sub-transmission line on the existing Aurora – Fransvlei 132kV sub-transmission line, the applicant argues that the appellant has provided no factual basis to confirm how, or why, such electro-magnetic impact may occur and the harm that it would suffer in relation thereto. The applicant denies that such impact will occur. Further to this, the applicant states that the appellants concerns are based on the incorrect premise that the Aurora – Fransvlei 132 KV sub-transmission line is the appellants own sub-transmission line when it actually belongs to Eskom. The applicant thus contends that if such electro-magnetic impact were to occur this would not cause WC1 WEF a loss of energy nor a resultant financial impact because the Aurora – Fransvlei 132 KV sub-transmission line is Eskom's line and not the appellant's.
- 2.2.8 The applicant further contends that the development of such 132 KV substation facility was approved in terms of the separate EIA under reference number 14/12/16/3/3/2/1057 in respect of the development of the Boulders WEF. The applicant thus argues that it is not permissible for the appellant to belatedly raise the argument pertaining to dust impacts associated with the proposed substation facility via the current appeal process. As such it is argued that this ground of appeal is unrelated to the current decision by the Department to grant the EA for the 132 KV sub-transmission line. Nonetheless the applicant denies

that an increase in traffic on the applicable dirt road will result in an abnormal ingress of dust into the substation buildings because of the dominant southerly wind direction of the area.

- 2.2.9 In their comments on this ground of appeal, the Department reiterates that there were two separate EIA processes for the Boulders WEF and the sub-transmission line. According to the Department, the appellant requested a wake effect assessment for the proposed Boulders WEF. The Department further states that although no major air quality issues were expected, the final BAR includes appropriate mitigation measures to curtail dust generation.
- 2.2.10 In evaluating this ground of appeal and the responses thereto, I note that two separate EIA processes were followed for the Boulders WEF and for the 132 KV sub-transmission line. Whilst I take note of the appellant's argument that the proposed Boulders WEF and the associated sub-transmission line should have been dealt with under one EA application, I can find no merit in this argument. The applicant intends to construct the Boulders WEF and associated sub-transmission in different phases. Furthermore the sub-transmission line can only be constructed once the Boulders WEF construction has commenced. I find this to be a logical reason for a separation of the projects. The fundamental principle is that the applicant obtain EAs for both the construction of the Boulders WEF and the associated sub-transmission line.
- 2.2.11 In addition, while it is accepted that there will be a limited shutdown of the Fransvlei substation to allow for the grid connection and Optical Ground Wire commissioning, it is unlikely that such shutdown will impact the appellant to the extent that it will result in a significant loss of revenue. This is mainly because the shutdown will only be for a very limited period of approximately 04 hours, with a further maximum of 3 days required for Optical Ground Wire commissioning. In addition to this, I note the content of the Eskom Holdings Soc Limited's Power Purchase Agreement (PPA) for wind projects. All successful bidders in Bid Window 2, including the appellant, were required to sign the PPA with Eskom. Clause 1.1 of the PPA makes specific provision for an "Allowed Grid Unavailability

Period". The allowed grid unavailability period should have thus been considered in the financial feasibility assessment of the WC1.

- 2.2.12 Regarding the concerns relating to possible electro-magnetic impacts that may be caused by the proposed 132 KV sub-transmission line on the existing Aurora – Fransvlei 132 KV sub-transmission line, I find that any possible loss of energy on the line would be suffered by Eskom and not the appellant. The existing Aurora – Fransvlei 132 KV sub-transmission line is owned, operated and maintained by Eskom and not the appellant. I find that it is unlikely that the appellant would suffer a financial impact due to any loss of energy on the Aurora – Fransvlei 132 KV sub-transmission line, as its Delivery Point is at the Fransvlei substation and not at any other point after the energy has entered the Aurora – Fransvlei 132 KV sub-transmission line. Furthermore 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.
- 2.2.13 Further to the above, I have noted that the appellant conflates the development of the proposed Boulders WEF with the development of the 132 KV sub-transmission line. 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. The development of the on-site substation was authorised under the EA issued with reference number: 14/12/16/3/3/2/1057 and not under the decision which is the subject matter of the appeal at hand. Thus it is inappropriate for the appellant to raise concerns relating to dust impacts caused by the construction of the substation in this appeal process.
- 2.2.14 I find that the impacts on air quality during the construction phase of the sub-transmission lines will primarily result from increased dust levels associated with the required excavation, vegetation clearing, grading and other construction activities. Appropriate and adequate mitigation measures have been incorporated in the final BAR and EMPr. Such mitigation measure includes the following:
- 2.2.14.1 Watering down of un-surfaced and cleared areas during windy conditions;
 - 2.2.14.2 Retention of vegetation where possible;
 - 2.2.14.3 A speed limit of 40km/h must not be exceeded on dirt roads; and

2.2.14.4 Any complaints or claims emanating from the lack of dust control should be attended to immediately.

2.2.15 In light of the foregoing, this ground of appeal stands to be dismissed

3 DECISION

3.1 In reaching my decision on the appeal lodged against the decision of the Department to grant the abovementioned EA, I have taken the following into consideration:

3.1.1 The appeal lodged by the appellants on 07 July 2020;

3.1.2 Responding statement submitted by the applicant on 29 July 2020;

3.1.3 Comments on the grounds of appeal submitted by the Department on 27 August 2020; and

3.1.4 The information contained in the project file (14/12/16/3/3/1/2108) with specific reference to the final BAR and EA dated 08 June 2020.

3.2 In terms of section 43(6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, condition or directive or to make any other appropriate decision.

3.3 Having carefully considered the abovementioned information and in terms of section 43(6) of NEMA, I have decided to dismiss the grounds of appeal and confirm the Department's decision to issue EA to the applicant on 8 June 2020.

3.4 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/or responses thereto, and where a particular statement is not directly addressed, the absence of any response thereof should not be interpreted to mean that I agree with or abide by the statement made.

3.5 Should the appellant be dissatisfied with any aspect of my decision, they may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must

be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000) (PAJA).



MS B D CREECY, MP

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 29/9/2020