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Att: P. Scherzer

**Registered post and/or email**

CC: The Director-General  
National Department of Environmental Affairs  
Environmental Impact Assessment  
473 Steve Biko Road  
Environment House  
Arcadia

**Date:** 14 December 2016

**Your ref:** 14/12/16/3/3/2/745

**Our ref:** A Armstrong/MAT3639

**Direct dial:** 031 940 0501

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Dear Sirs,

**14/12/16/3/3/2/745- RCL FOODS Consumer (Pty) Ltd | Eskom Holdings  
SOC Limited  
Objection against draft Environmental Impact Assessment report submitted  
by Acer (Africa) Environmental Consultants in respect of proposed Isundu  
765/400 KV Sub-Station and Turn-In Transmission Lines**

**INTRODUCTION**

1. We are instructed by RCL FOODS Consumer (Pty) Ltd ("RCL Foods") to lodge an objection against the draft Environmental Impact Assessment Report ("EIAR") that was submitted by Acer (Africa) Environmental Consultants, the environmental assessment practitioner ("EAP") dated October 2016 for and on behalf of Eskom Holdings SOC Limited ("Eskom" or "the Applicant") under Ref No 14/12/16/3/3/2/745 for the proposed Isundu 765/400 kV substation and turn in lines ("The Isundu Project"). RCL Foods submitted an objection with associated annexures to the Scoping Report which objection is dated 3 August 2015 ("The RCL Foods Scoping objection"), and which is referenced herein.<sup>1</sup>

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<sup>1</sup> This report should be in the possession of Acer and the DEA. It is not included as an annexure hereto so as not to burden the record. It is available on request.

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2. RCL Foods has also submitted an appeal against the environmental authorisation ("EA") issued for the Eskom transmission line corridor - The Proposed Venus - Sigma 765 kV power line, Sigma Hector 400 kV powerline( x2) and new feeder bays at Hector Substation under EIA 12/12/20/1397/1 and 3. ("The RCL appeal"). This corridor has informed the site selection of the Isundu substation. The two are integrally related. The EIAR incorrectly states at page 1 that only two appeals were submitted and withdrawn. There is no mention of the RCL appeal which is currently under consideration by the Minister of Environmental affairs.<sup>2</sup> RCL Foods was entitled to lodge a supplementary addendum to the appeal which is dated 29 November 2016 and is attached hereto marked **A**.

### **SUMMARY OF OBJECTIONS / REASONS FOR REFUSAL OF ENVIRONMENTAL AUTHORISATION**

3. RCL Foods requests that the application for an EA be refused for the following reasons:
  - 3.1. The significant impacts that will arise from the construction and operation of the Isundu Substation including economic, social, biosecurity, light, dust noise, food security and blasting impacts- noise, air blast, vibrations and fly rock -will debilitate the RCL Foods operation;
  - 3.2. No possibility of Compensation by Eskom or Financial guarantees;
  - 3.3. The site has been identified without due process as a result of the EA granted to Eskom for The Proposed Venus - Sigma 765 kV power line, Sigma Hector 400 kV powerline( x2) and new feeder bays at Hector Substation under EIA 12/12/20/1397/1 and 3 and which EA is subject to an appeal by RCL Foods;
  - 3.4. No alternate sites have been investigated;
  - 3.5. The principles of planning have been contravened;
  - 3.6. The application is contrary to the Constitution, the principles and processes of the National Environmental Management Act, 1998, as amended ( "NEMA"), and the Promotion of Just administrative Action Act, 2000 ( "PAJA").

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<sup>2</sup> This appeal is in the possession of Eskom, Acer and the DEA. It is not included as an annexure hereto so as not to burden the record. It is available on request.

## **THE ISUNDU SUBSTATION**

4. The Isundu Project entails construction of the following:
  - 4.1. Circuit breakers
  - 4.2. Isolators
  - 4.3. Holding Bunds
  - 4.4. Wave trappers
  - 4.5. Loop-in lines
  - 4.6. Loop out lines
  - 4.7. Telecommunication masts,
  - 4.8. Buildings,
  - 4.9. Flood lights
  - 4.10. Feeder Bays
  - 4.11. One incoming 765 kV transmission line and two outgoing 400 kV transmission lines together with associated switching, protection and control equipment;
  - 4.12. EHV transformers to step down the power from incoming 765 kV to outgoing 400 kV;
  - 4.13. Dedicated reactors for each transmission line coming into and going out of the Isundu substation;
  - 4.14. Heavy metal busbars to tie in the transmission lines of a given voltage;
  - 4.15. Three terminal towers on the exterior of the perimeter fence for incoming and outgoing transmission lines;
  - 4.16. The main operational facilities which will include a small office, workshop areas and storage space, external storage areas, a control room and a telecommunication facilities; and
  - 4.17. A substantial perimeter security fence which will be earthed.
  
5. The Construction of the sub-station is estimated to take 3 years. This is described on page 31 and 32 of the EIAR. Blasting will take up to 6.4 months (or longer) based on 22 blasting days per month. There will be 3 blasting phases with 19, 8 and 5 blasts in each phase. Each blast hole is spread over an area of 38m x 38m. The total area to be blasted is 68 000 hectares.
  
6. Eskom has indicated that construction will commence in approximately 2 to 3 years, as was confirmed at the meeting of the 7 November 2016. (See Annexure E to Annexure A hereto.)

## **RCL FOODS**

7. There are 11 RCL Foods Farm operations within the affected area- being within the authorised corridor, and adjacent to the Isundu substation site. The RCL farms are situate on Portions 187 and 253 of 855 on the Farm Vaalkop and Dadelfontein, 14767 of RCL Ranch and Portion 19 of 1032 of the Farm Langehoop. There are 23 farms in total that may be directly or indirectly affected by the construction of the transmission lines and associated infrastructure. This objection demonstrates why the proposed Substation not be accommodated near the RCL Sites as proposed.
  
8. In assessing the weight to be given to this submission it should be borne in mind that RCL Foods is a major national producer of broiler chickens. It is a fully vertically integrated broiler producer that breeds and rears its own livestock which it feeds from its own feed mills, and processes, distributes and markets its products. RCL Foods produces and supplies fresh, frozen, value-added and further-processed chicken products, and operates in the retail, wholesale and foodservice channels with four brands - RCL, Farmer Brown, RCL Simply Chicken and Food Solutions. It supplies its products to major retailers, wholesalers and fast food chains, including KFC, Nando's and Chicken Licken. It also produces a variety of dealer-own brands for certain retailers and wholesalers.

## **The RCL Foods Value Chain**

9. To place our RCL' Food's concerns in context it is necessary to understand how its business operates. The farms affected by the proposed activities are components of a much larger production chain. RCL's operation runs on an extremely detailed and sensitive chain of laying and rearing events. A brief explanation is as follows.
  
10. RCL Foods sources its pedigreed breed stock (Grandparents) from the United Kingdom and Europe. From those pedigreed animals it breeds its parent stock. Those breeding parents lay chicks that will ultimately become broiler chickens for slaughter. The initial pedigreed grandparents result in the production through the parent stock of approximately 5 million chickens per week. Any disruption to the grand parents will result in a disastrous multiplier effect and loss of birds - equating to the loss of millions of rand per week, and a significant disruption to the supply of staple food to the nation's population. The RCL Foods farms are managed and controlled on an exceptionally delicately balanced protocol which ensures the stability and well-being of the birds. Any minor disturbance thereto will create disruption and death. The major factors are water, food, light, noise, vibrations, dust and air quality, and any threat to its biosecurity. Any disturbance to the chicks will affect their feeding pattern.

11. There are effectively 4 phases to the production of chickens for slaughter. The first phase introduces and rears the pedigreed grandparent stock that will produce the good breeding parent stock. The second phase is production and rearing of the good breeding stock in order to produce the broiler stock (the stock that will be sold for consumption). The third phase is the production and rearing of the broiler stock, and the fourth phase is the processing of the broiler stock.
12. RCL Foods import a "female line" and a "male line". These grandparent chicks are placed on a rearing farm where they are fed and grown to 22 weeks. At 22 weeks the chicks are transferred to the laying farms. At the laying farms the chicks mate. From 26 to 60 weeks the hens produce eggs. (At 60 weeks the birds are replaced with new intake). The eggs are placed in an incubator for 18 days and thereafter they are transferred to the hatchery for 3 days. Each grandparent hen produces approximately 148 to 162 parent eggs- approximately 11 million eggs. From these eggs breeding (parent stock) chicks are produced.
13. These chicks are responsible for laying the eggs that will be reared into broiler chickens for slaughter. From the grandparent farms the parent stock chicks are transported to the rearing houses. The chicks are fed and grown to 21 weeks and from there they are transferred to the laying farms. Here the chicks mate and from 26 to 60 weeks the hens produce ideal eggs. These eggs are then transferred to the hatchery where they are placed in an incubator for 18 days. After 18 days they are transferred to the hatchery for 3 days and after this cycle of 21 days a broiler chick gets produced.
14. The broiler chicks get transferred to the broiler farms and here they are fed and grown to the point of slaughter on a 6 week cycle. Five million chicks per week are slaughtered as a result of this production chain.
15. RCL Foods then slaughters and processes the birds at its processing plants, prior to distribution of a variety of products to supermarkets, restaurants and fast food chain stores.
16. Examples of the strict controls that are required for the successful rearing of the grandparent and parent stock and production of broiler chicks for slaughter are:
  - 16.1. On arrival the grandparent chicks are quarantined for six weeks.

- 16.2. The personnel responsible for the chicks are quarantined with them for 2 weeks and do not leave the facility during this time nor are the staff changed. A change in staff at this stage disrupts the chicks.
- 16.3. All persons and vehicles going in and out of the premises have to go through sanitization processes. All persons have to wear specially designed protective clothing.
- 16.4. The chicks are fed the exact amount of food through feeders at hourly intervals every day to an exact weight.
- 16.5. They are provided with the exact amount of water of a constant quality through dispensers every day.
17. It is clearly evident from the above that RCL Foods process is an integrated, complex and delicately balanced value chain.
18. The operations in question are not individual, standalone chicken farms, and each forms a significant link in this value chain. Any minor disruption to these processes will result in disastrous consequences for RCL - both in terms of known and unknown impacts.
19. RCL Foods has contracts in place with retailers and fast food chain stores to supply chicken products. In the event that the operations at any of these farms are interrupted then this will place RCL in breach of its obligations. RCL has established effective best practice national norms and complies with strict international policy relevant to its national demand. In order to achieve this it also has to be certified according to strict state veterinary standards.
20. The directly affected sites comprise RCL's 7 parent stock laying farms and 4 broiler farms. At each of the 7 laying farms 44000 chicks mate and lay eggs producing 7 million eggs per farm - a total of 49 million eggs for broiler production per annum. The eggs are incubated and hatched. A broiler chick is produced and gets transferred to the adjacent broiler farms. They are meticulously fed and watered according to scientific data to the point of slaughter. The loss of one breeding farm, assuming that it can be re-established within 1 breeding cycle, is in excess of R338 million. If it cannot be re-established the multiplier effect is enormous.

## **GROUND OF OBJECTION 1: IMPACTS**

21. On the EAP's own version RCL Foods will be significantly affected and RCL given much attention in the EIAR. The impacts that have the potential to destroy or significantly detrimentally affect RCL Foods production are identified. Yet they cannot adequately or conclusively be mitigated to a point that the EAP, Eskom and RCL can be satisfied that the impacts will not arise. Given the nature of the impacts, the sensitive nature of the poultry business, its contribution to RCL Food and the country's economy, the contribution to social employment and to food security, the consequences that may arise either individually or cumulatively are too great and pose too serious a risk to be justified. Accordingly this constitutes a fatal flaw. The impacts of concern are:

### **Economic Impacts**

22. The potential economic impacts on the RCL Foods facility are enormous. Its significance in the economic environment of the region and nationally is readily evident and should have been red flagged as a fatal flaw.
23. The proposal to establish the sub-station at Sigma was abandoned due to economic reasons that Eskom will suffer. Conversely, the effect that the Isundu sub-station and the transmission lines will have on RCL's economic security, and the knock on effect that it will have on food security, and the costs of substituting this food source, must be given the same consideration and significance. The price of losing this facility is too high.
24. With one disruption to its laying and breeding facility RCL can lose approximately R300 million rand directly - that is not counting the costs of the social impacts relating to food security and employment.
25. Other considerations that need to be taken into account:
- 25.1. There has been substantial investment in RCL's properties and operations.
  - 25.2. RCL facility directly and indirectly results in employment for 8000 people, thus making RCL one of the bigger employers in this area.
  - 25.3. RCL is one of the bigger industries in KZN.
  - 25.4. It cannot be moved as it is strategically located to RCL's other operations e.g. laying Farms, Hatchery and Broiler Farms.
  - 25.5. All farms on this site are linked to a production cycle and therefore cannot be moved to alternative sites.
  - 25.6. Disruptions to the process internally - such as moving farms - cannot be accommodated without impacting on the cumulative process.

26. The EIAR confirms at paragraph 10.7 of the report that *“the project is not in line with the current policies and land use plans of the study area which has been zoned for the following uses: agricultural with some tourism, agriculture potential, conservation, and also an urban scheme where the project crosses into Mayibuye development...The local economy is heavily reliant on agriculture and agro-processing sectors of the GDP generation.”*

At page 84 of the EIAR RCL's economics is noted. Acer has misquoted the economic state of affairs. RCL's revenue is R800 000 with a selling price of R1.9 million per day. Its gross profit per annum equates to R295 million per year. (See Annexure C hereto) This is the direct potential loss that RCL may suffer due to impacts arising. The EAP proposes untested mitigation measures, which, on its version, may or may not be successful. As an alternative to these mitigation measures, if they do not work, by which stage the damage would have been done, the EAP simply proposes compensation (including at page 87 of the Executive Summary). However, this has not been explored at all in the EIA.

There is no suggestion about putting up any financial guarantees that would be acceptable to RCL Foods for compensation for its production. In any event, compensation would not be able to fully address the full nature of the economic and social impacts that will result as a result of the loss of this very significant food source. Whilst the EAP and Eskom deem it expedient to move the African Bird of Prey Sanctuary, as is recorded in the minutes of the 7<sup>th</sup> of November 2016 (Annexure E of Annexure **A**), and which sanctuary is further away from the substation than is RCL Foods, the same consideration is not given to the impact that would result on RCL Foods.

27. The application is fatally flawed in that it has not adequately considered the significant economic impact a disruption to the RCL Foods facility will have to RL and to the nation as a whole.

### **Social Impacts**

28. The proposal has the potential to sterilise the poultry industry to a significant extent. This in turn will result in severe social consequences in terms of job losses, lack of income and diminished community support (See Annexure **B**). The EIAR does not address the multiplier effect that the loss of a portion of the RCL value chain will have.



29. RCL Foods is also under severe pressure as a result of the free trade agreements with Europe, USA and Brazil that are having a significant impact on its, and all other poultry producers, productivity and viability. These are circumstances are out of its control. These circumstances are placing food security in South Africa under jeopardy. The competent authorities that can control circumstances under their jurisdiction must take cognisance of this. The DEA can ensure that the location of the proposed substation does not further compromise the ability of one of the major protein producers in the country to continue with its supply uninterrupted. To do so would be to jeopardise the millions of citizens of South Africa who rely on this source of food. See the article attached marked **B**. The site of the substation has not yet been finally determined and it is not too late to consider alternate sites at this stage, as has been proposed by RCL Foods.
30. Page 79 of the report states that *"agriculture, whilst experiencing a decline in its contribution to employment and the local economy, remains of importance and is the second biggest economic sector in the LM. The agricultural sector is based around sugar cane farming, forestry and in particular the poultry sector. The region has the second highest concentration of poultry producers in the world, and is also responsible for the employment of a network of service providers."* A disruption to this network will result in severe job losses at the site, within the Value chain which employs in excess of 8 000 employees as well as to the direct and indirect associated service providers and contractors. The true value of this impact has not been taken into account in the report.

### **Food Security Impacts**

Food production, and in particular protein, is a national imperative, and chicken has surpassed red meat as the primary protein source amongst South African consumers. The Department is referred to the quote from the EIAR in the paragraph above. The damage that the substation and associated infrastructure can potentially do to this supply chain is significant, and the resultant impacts on food supply and nutrition cannot be conclusively mitigated. The RCL operations simply cannot be disturbed or compromised. This existing operation cannot simply be stopped or relocated at a stroke of a pen. Notwithstanding the demand for improved Eskom infrastructure, the Eskom infrastructure can be established elsewhere. The fact that Eskom and the EAP have not identified an alternate site not in the vicinity of the RCL production is a risk that it they have taken. The disruption to the RCL operations will be a significant threat to food security, a strategic imperative in the National Development Plan and the Phakiso project. Agriculture is promoted and protected by legislation and policy. Agriculture of this degree and magnitude cannot be undermined.

31. The impacts that will result for RCL Foods and for the nation at large are not justifiable, and the result must be the "no -go" option, or the application must consider alternate sites.
32. The Mkambathini Municipality in whose jurisdiction the proposed development falls has identified this significant agricultural industry and has given it the protection it deserves in its spatial development framework. The area in general is identified as ecotourism/ and agriculture. In terms of the Constitution, the local authority has the competence to determine this - which competence cannot be usurped by the private sector, parastatal or national or provincial authorities.
33. The application is fatally flawed in that it has not adequately considered the significant impact on food security that a disruption to the RCL facility will have.

#### **Electrical Emissions and low frequency fields**

34. The significant detrimental effect of electromagnetic fields ("**EMFs**") on the well-being and breeding potential of the birds is discussed in detail in the Metamorphosis report attached as Annexure B to the RCL Food's objection to the Scoping report. This concern is re-iterated in the submission made by the African Birds of Prey Association who also have grave concerns relating to EMF's on the birds in the sanctuary and on the birds whose habitat is in the area - attached to the RCL Scoping Objection marked C.
35. Electromagnetic fields are discussed at page 74 of the EIAR. The EIAR confirms that extremely low frequency fields ("ELF") have been the focus of research due to reports of possible deleterious health effects of fields that could induce small electric currents in nearby conducting objects, including living organisms. *"Powerlines and EMF's induce currents in objects within these fields due to the action of the electric and magnetic field"*.

The Isundu EIA report and the Transmission line EIA report confirmed the corona effect that occurs from this infrastructure. The EIA report for the Isundu sub-station does not consider the impact on sensitive birds but has only available research on the possible carcinogenic effects it may have on humans. Accordingly the effect on laying birds has not been assessed. The EIAR makes reference to an existing 275 kV line on RCL's property [at page 76]. It also makes reference to the 765 kV transmission line corridor that has been approved over and adjacent to the RCL property. The EIAR does not take into account the cumulative effect that these lines may have on the birds.

36. The impact of high electrical voltage/currents and microwaves on breeding birds and on people in general in the area cannot be mitigated. The precautionary approach was not adopted. The application is fatally flawed in that it has not adequately considered the significant economic impact a disruption to the RCL facility will have, should the birds be affected by EMF's.

### **Biosecurity**

37. Due to the sensitivity of RCL's operations it has very strict biosecurity rules. Biosecurity, simply put, includes the processes followed to ensure that an infectious disease, or any other vector that may cause death, sickness, infertility or failure to lay, is not introduced into flock. These preventative measures are based on applied micro-biology and epidemiology.
38. A comprehensive biosecurity program comprises a hierarchy of conceptual, structural and operational components directed at preventing infectious disease transmission.
39. Conceptual biosecurity is the primary level of biosecurity and involves the siting of a poultry operation and its various components. Physical isolation is a primary consideration in securing conceptual biosecurity.
40. The following are, amongst others, the sources of poultry diseases:
- 40.1. Source contamination: Dust, animals, feed or water that carry a biological agent and transmit it. People, clothing or vehicles can harbour a biological agent that when moved around can spread the agent;
  - 40.2. Vector contamination: Vermin, wild birds (especially water that fowl and pigeons), insects and fomites (such as fecal material, feathers and dust) can be wind or water transmitted;
  - 40.3. Facility contamination: a major source of disease is transmission by people (employees, truck drivers etc).
41. The farms are currently isolated and are exposed to no threat from the immediate environment. Public roads and small roads in the vicinity of a chicken farm exacerbate exposure of that farm to biosecurity risks. As does any increase in uncontrolled human/vehicle traffic on and around the farms.
42. There is the related risk that government and quarantine certification will be withdrawn if the farm is no longer isolated as before.

43. In principle, if RCL was looking to introduce a new farm to an area, it would not place its farm within a 10km radius of any other farm which was not a RCL farm, or any other vector source. This radius would put RCL's operation outside of the buffer control area for the outbreak of Avian Influenza (AI). Were AI not a threat, then RCL would in any event not position a farm close to a source of biosecurity risk, and to any other risk that will put the rearing of the animals at risk. This is discussed further in the Metamorphosis report attached as B to the RCL Foods Scoping Objection.

The increased activities that will be introduced by the construction and operation of the sub-station and the transmission lines will exacerbate the risk to biosecurity. Please refer to the veterinarian reports attached hereto marked Annexures **D1 and 2<sup>3</sup>**.

44. The EIAR itself confirms this. This is summarised at xi of the executive summary which states that *"this assessment found it a challenge to predict with precision how significant dust and noise impacts may be on a particular farm and flock at RCL within a particular year or part of the laying cycle. Increased dust levels can result in physical damage to the birds' respiratory tract and/or the entry of infectious agents. These aspects again increases susceptibility to disease and stress within the birds. The creation of dust is a common occurrence on construction sites and in this instance the prevailing wind direction is towards the RCL farms."* The report confirms that the dust levels will certainly be increased around RCL houses during the initial eight to twelve month construction period. Indeed Dr Horner, the poultry specialist appointed by Eskom, and whose report, although not particularly comprehensive, appears at Appendix 5.2 of the EIAR confirms the state of affairs.
45. The application is fatally flawed in that it has not adequately considered the significant impact a disruption to the RCL facility will have as a result of the compromised biosecurity.

### **Noise and Vibrations**

46. The birds are very sensitive to noise, vibrations/tremors, .These factors will have a severe negative impact on production in any combination of the following ways:
- 46.1. Decrease in Eggs per hen, hatchability, and fertility;
  - 46.2. Decreased growth;
  - 46.3. Decreased feed and water intake;

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<sup>3</sup> Although the D2 report was compiled in response to a mining application the principles remain the same, particularly as to the effects of noise and dust.

- 46.4. Increase in mortality - birds 'bundle up' when stressed which causes 'smothering';
- 46.5. Excessive dust entering the chicken houses and affecting the health of the birds.
47. Noise during the construction phase is likely to affect production as breeding birds are very sensitive to changes in noise levels. Noise levels after construction if or when there is a short in the circuit at the substation may also affect the birds. RCL forms a significant component of the landscape upon which the impact of noise will be far more significant than merely on rural farmland.
48. The EIAR found that operational noise and general construction noise will not affect the chickens due to the existing noise of the laying houses. RCL Foods strongly disagrees with this statement. Construction noise which will endure over a period of three years will create a significant amount of noise which goes far beyond the noise which the birds have become accustomed to within their own laying houses. The blasting report also in Appendix 5.2 of the EIAR and as summarised at page xi confirms that blasting would be required as part of the earthworks and that the audible noise could range from anywhere between 51.5 DBA to 92.1 DBA. The report goes on to state that this range is significant and difficult to predict. However, given the sensitivities of the birds and any noise being in excess of at least 50 decibels it would have an impact on the birds. This is particularly so given that the most sensitive chicken houses ( laying farms) are merely a couple of hundred meters away from the proposed sub-station and that blasting is going to take place over a period of approximately 6 months. The risk of death or reduced productivity in the birds is too high for RCL to co-exist with the construction of the sub-station. The only mitigation that the EAP can offer is a single day's test blast, which is unlikely to produce adequate results to determine the impacts of blasting over a period of eight months, under conditions, both meteorological and physical, that may differ on a daily basis. The fact that blasting is going to take place is a major fatal flaw of this particular application.
49. The application is fatally flawed in that it has not adequately considered the significant impacts noise, dust and vibrations of the blasting will have on the viability of the birds.

### **Dust**

50. There will be an increase in dust due to the movement of topsoil and subsoil, the crushing plant and the movement of vehicles and haulage of infrastructure. There will be an excessive amount of dust during the blasting and construction period as

detailed in the discussion on Biosecurity above. Dr Horner confirms this in the EIAR specialist report at Appendix 5.2 as does do the RCL vets at Annexures **D1 and 2**.

### **Lighting**

51. There will be security lighting around the substation which will affect the photo-stimulation of the breeding birds for reproduction. Birds get the signal for reproduction based on body condition as well as photo-stimulation and feed levels. Incorrect stimulation will negatively impact production. This impact has not been sufficiently taken into account rendering the application fatally flawed. Whilst RCL may have a degree of muted lighting the substation is going to be surrounded by security floodlights on tall masts that will be on all night. The Eskom veterinarian report at Annexure D of the EIAR confirms the impact that light has on the birds.
52. All the potential impacts put together, notwithstanding that certain impacts may be marginally mitigated on its own, clearly indicates that the sensitive nature of the facility of the intensive poultry operation run by RCL Foods cannot co-exist with a sub-station. See attached report at Annexure **D2**.

### **Ground of objection 2: Compensation**

53. Eskom have provided no evidence or indication that they will be able to possibly compensate or provide financial guarantees acceptable to RCL Foods at this level for any damages arising of that have not and cannot be adequately mitigated. In any event monetary compensation may not fill the loss that will impact on food security. This has been discussed above under Economics.

### **Ground of Objection 3: Unlawful Authorisation of the Transmission line Corridor**

54. The position of the Isundu site has been informed purely from a flawed process, which is currently the subject of an appeal, and hence this application is premature. The flawed process relates to the environmental authorisation EA granted to Eskom for The Proposed Venus - Sigma 765 kV power line, Sigma Hector 400 kV powerline (x2) and new feeder bays at Hector Substation under EIA 12/12/20/1397/1 and 3. This flawed process excluded any cognisance of the existence of RCL Foods facility and hence was approved by the Department of Environmental Affairs without any knowledge of the existence of RCL Foods. That route should never have been approved, at least in so far as the area that affects RCL Foods is concerned. The two components of the Eskom infrastructure are integrally related- the one being contingent upon the other.

RCL Foods applied and was granted condonation for the filing of the appeal by the Minister of Environmental Affairs. The Department is referred to RCL Foods' appeal against this decision which appeal is dated 31 March 2016<sup>4</sup>, as supplemented by the submission of the 29 November 2016 – the latter is attached marked Annexure A. That submission clearly indicates how the assessment should not have arrived at the selection of the preferred alternative. The assessment matrix is skewed due to the exclusion of RCL farms. If included that matrix demonstrates how a preferred alternative, simply avoiding that short distance around RCL properties could have been arrived at, either by a slight alteration to the western corridor, or a reconsideration of the central corridor. This would have resulted in the current proposed substation being placed elsewhere. Please refer specifically to paragraph 4 of Annexure A for further details.

#### **Ground of Objection 4: No Alternative Site**

55. Originally the Sigma site was identified as the preferred site. This has now been abandoned by Eskom. The Isundu site was never one of the alternative sites investigated in that process, and no sites have been investigated as an alternative to the Isundu site in this process. This constitutes a fatal flaw. This EIA process has identified the need for alternate sites to be investigated notwithstanding that an exemption do so, without the necessary public participation, was granted.
56. RCL proposed alternate sites as detailed in Annexure A hereto. They were all dismissed simply on the fact that more cut and fill would be required. This does not constitute an assessment of alternate sites. It was more convenient for Eskom to doggedly stick to the Isundu site. Accordingly it must now "live or die" with that decision. If the site is not appropriate, which it is not given the nature and pre-existence of the RCL facility, then the application must be refused or it must be referred back for further assessments into alternative sites, including the RCL site should Eskom wish to purchase it with a sufficient lead in time to enable RCL to source alternate isolated sites and to do the necessary approvals. This site is of particular value to RCL as it is still isolated from human encroachment and disruptive impacts.
57. It is accepted that there is a great need for Eskom to improve its infrastructure. But the significant nature of the RCL operation in this location puts the need and desirability of the project in this location into question, and the no-go option would be the most viable option.

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<sup>4</sup> Ibid 2 above.

58. At the very least, as far as RCL is concerned an alternative site at least 5- 10 kilometres from RCL should be considered.
59. The applicant has not satisfied the requirement to establish need and desirability in this location, nor the requirement not to assess alternate sites, and hence the assessment is fatally flawed.

**Ground of Objection 5: Contrary to constitutional prerogative of municipal planning.**

**Planning**

60. The proposal is contrary to the planning principles of the affected municipalities as upheld in the Constitution. The Makambathini Municipality has objected to the proposal as it is not in accordance with its SDF - its planning instrument that is developed with ongoing assessment and identification of appropriate land use for the future. The Musunduzi Municipality have also objected to those portions of the proposal that fall within its jurisdiction. Whilst national competence in certain areas such as environment may overlap with local government, it does not do so in terms of planning.
61. There is no overwhelming justification in terms of ecological issues for the sub-station to be located in this specific location which would override planning principles. In fact the contrary applies. Accordingly the assessment is fatal flawed.

**Ground of Objection 6: The application is contrary to the law**

62. The application does not pass constitutional muster required in the Constitution of South Africa. It attempts to treat Eskom more favourably than RCL Foods. That does not equate to equality before the law. RCL Foods is an existing facility which provides great benefit to the people of South Africa. Eskom is also required to provide benefit to South Africans. However, this particular site has not as yet been established by Eskom and there are very good reasons why it should not be established where it is proposed to be, at the expense of RCL Foods and South African citizens.
63. It is also contrary to section 24 of the Constitution that states that the environment must be protected for the benefit of present and future generations through reasonable legislative and other measures that "secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development". Eskom's proposal in this instance is not justifiable, either economically or socially and would detrimentally impact on both present and future generations in terms of economic prosperity and food security. The proposal also



contravenes section 25 of the Constitution which states that no-one may be deprived of property. Effectively should the EA be granted it will amount to an arbitrary deprivation of property by the State at the instance of Eskom.

64. The application is also contrary to the overriding principles of NEMA, the overriding principle being sustainable development which is *"the integration of social, economic and environmental factors into planning, implementation and decision making as to ensure that development serves present and future generations"*. The application is also not an example of the best practicable environmental option which is that option *"that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term"*.
65. NEMA also upholds the principle that a risk averse and cautious approach must be applied which takes into account the limit of current knowledge about the consequences of decision and actions. The EIAR itself states at xii that in this instance *"The challenge of mitigation is that it is difficult to predict with certainty exactly how either blasting, noise or dust may affect RCL's chickens. The significance of any impact can also range as there are too many variables and assumptions involved in the calculations making it difficult to predict how accurate the models are compared to how actual impacts would be experienced on the ground, especially by biological entities that have a range of tolerances. It is possible these initial earthworks would have no significant impact at all. However they could have significant financial and production impacts for RCL."*

## **CONCLUSION**

66. To grant authorisation for this application in the light of the objections detailed above would render the decision appealable to the Minister and reviewable in a court of law under NEMA, the Constitution and the provisions of section 6 of PAJA. The decision-maker would be preferring Eskom over RCL on the limited information before him. There is not sufficient safe guards in the assessment to ensure that RCL will be protected as is its right. The two facilities simply cannot co-exist, and there exists no justification to approve the proposed substation at the Isundu site. The competent authority is not disallowing Eskom from building a substation or interfering or obstructing its role to provide electricity. Eskom itself has already delayed the process by a flawed EIA for the transmission line, and the decision to not proceed with the already approved Sigma substation. The DEA will simply be ensuring due process in so far as Eskom's obligation to find an appropriate site is concerned.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Aldine Armstrong', written in a cursive style.

**Aldine Armstrong**  
Specialist Environmental Attorney  
Eversheds