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Dear Ms. Armstrong,

Rainbow Farms (Pty) Ltd – Correspondence Dated 14 December 2016
EIA No: 14/12/16/3/3/2/745
Your Reference: ARMSTRONG/MAT3639

Your correspondence sent on the 14 December 2016 has reference.

This response uses the same numbering as per your letter.

1. It would appear from your correspondence that RCL Foods has simply requested Eversheds to 'object' and thereafter Eversheds is free to just submit whatever Eversheds feels will either confuse the Authorities or give Eversheds an opportunity to appeal any decision based on a process issue or some vague assertion. ACER is lead to this conclusion by the constant reiteration since 2014 of issues and claims which have been dealt with, whilst there is no mention of discussions or negotiations agreed upon at the last Key Stakeholder Meeting.
2. The footnote in the Preface refers to the current RCL appeal and has now also been added to page 1. Importantly, as raised in previous correspondence, these are two separate EIA applications. The successful appeal of the transmission line will not have any change or influence on Eskom's application for the sub-station. Thus, RCL and Eversheds continue to frivolously waste time and resources appealing a transmission line application in the hope that their real concerns related to the sub-station will go away. Collectively, your understanding of how national infrastructure planning and approval is conducted is limited and incorrect.
- 3.1 This is not true. The key impacts and issues have been dealt with in detail, yet Eversheds still wishes to raise lists of issues that include items like 'food security' and 'fly rock' that will 'debilitate RCL's operation'. Fly rock was calculated to travel only 84 m; the nearest RCL farm is 450 m. In your previous submissions you stated an impact on RCL production would impact national food security; now food security forms part of the list that will debilitate RCL's operations. This shows little understanding or focus on the real issues, and rather just a focus on compiling lists of objections to raise against the project in the hope that something will 'stick'.

- 3.2 This is not true. Eversheds were present at the Key Stakeholder meeting between Eskom, ACER and RCL Foods on 7 November 2016. At this meeting Mr Stoltz, RCL Foods, stated that *'if Eskom says they are prepared to carry these risks, then things become simpler. RCL said that their standard was a 4 - 6% mortality and then, if all of a sudden they had 25% mortality, the task of quantifying the cause and risk, which will be difficult, could not be passed onto them'*.

Three of the actions from the meeting were:

- ❑ *Mr Stoltz stated that one of the pre-requisites that RCL would insist on would be that L14 would have to be closed up, which would put RCL in a better situation. Then, on dust, RCL and Eskom would need to have a look at what is possible with the screens and monitoring. Then, lastly, there would need to be a mechanism agreed upon whereby RCL could say there has been something out of the ordinary and now it is time for compensation. This is what RCL needs. It would also be important to put in place some sort of tool on how compensation would be calculated, viz. based on mortality rates.*
- ❑ *Mr Maharaj, RCL Foods, said they could work out a scale of what their baseline is and then what different percentage losses would cost.*
- ❑ *Mr van Houten, Eskom, said that if there was any information RCL had that could help Eskom and ACER better define the tolerances that had currently been estimated, then they should please provide this.*

Yet, this submission on the DEIAR does not make any mention or provide any estimates of a 'compensation scale' or tolerances for Eskom to consider and take forward with RCL as agreed at our key stakeholder meeting. In addition, it does not truthfully address the fact that RCL is considering the sale of this property and is relocating and significantly downscaling its KZN operations.

- 3.3 Whilst the identification of sub-station sites does take cognisance of transmission lines routes, there is no legal or 'due process' requirement which states that Eskom can only investigate sub-station sites if transmission lines, already authorised, lead to the site. Other technical criteria play a far more important role.
- 3.4 This not true. Section 4 of the DEIAR highlights the numerous alternative sites already considered since 2009 for this required sub-station, three of which were also taken through a full EIA process. In addition, ACER provided details at the RCL/Eversheds key stakeholder meeting on 7 November 2016 as to why the five alternatives suggested by RCL were not suitable. These proposed RCL alternative sites and the investigations have now also been included in the Final EIAR.
- 3.5 You claim the principles of planning have been contravened. This is a loose statement with no facts provided to support it.
- 3.6 You claim this application is contrary to the Constitution, NEMA and PAJA. These again are loose statements with no facts provided to support them.
- 5 This statement includes incorrect and misread facts. Blasting could conceivably be necessary only for 2.3 months for the current phase of construction which includes three of the areas to be blasted. The total of 6.4 months is the calculated maximum based on one blast every 3 days, for all four phases, and not on 22 blasting days per month as you state. The total area that may need to be blasted is 6.8 ha and not 68,000 ha as you state.
- 6 The commencement of construction is dependent on many factors and can change depending on various strategic decisions and funding availability. Starting in 2 to 3 years' time is currently what is

- programmed if authorisation is granted.
- 7 This is a loose statement that neither assists RCL and Eskom to reach an agreement, nor does it help the Authorities to better understand the issues and impacts. There are seven laying farms on the farm adjacent to the sub-station site, only three of which have been found to be close enough to potentially be impacted upon. The assertion that there are '23 farms in total that may be directly or indirectly affected by the construction of the transmission lines' is incorrect. This application includes approximately 4 km of 2 x 400 kV transmission lines which will not cross any of RCL Food's properties. Neither do any of the anticipated transmission lines. shown in Section 11.8 of the DEIAR which deals with the cumulative impacts, cross any of RCL Food's properties. Furthermore, Eversheds should also see the need to state that there are already numerous transmission lines across some of these 23 farms, others are adjacent to the National Route 3 highway, and others are adjacent to quarries. In addition, Eversheds should have seen the media statements that indicate that RCL Foods is currently in the process of selling many of these farms, which is also possibly why RCL offered some of them to Eskom as alternative sites.
 - 8 Eversheds states '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.' Eversheds conveniently ignores the fact that RCL Foods is currently selling farms and retrenching staff in KZN and the farms in question may not even be owned by RCL Foods when Eskom wishes to start construction. This fact also needs to be 'given weight' in the final evaluation of possible impacts and mitigation.
 - 9- 20 This is all value chain information that has been provided on numerous occasions since 2014. However, none of it is updated with production facts and figures that explain, for example, how RCL can be reported in the media to be selling 15 out of its 25 farms in KZN without affecting this 'integrated, complex, and delicately balanced value chain', where 'any minor disruption to these processes will result in disastrous consequences for RCL' and how the sale of these farms will not interrupt operations and place RCL in breach of its contractual obligations as claimed in points 17, 18 and 19.
 - 21 Potential impacts upon RCL have been given much attention and so have the mitigation measures and strategies devised. Eversheds continues to insist that any impact upon their client constitutes a 'fatal flaw' whereas their client indicated clearly at the key stakeholder meeting that negotiations with regard to the mitigation options and approach proposed were possible.
 - 22 Please refer to the comments made on points 9-20 in terms of economic impacts.
 - 23 Economic costs and factors do play a role in all Government and business decision-making, as they will have played a role in RCL's decision to terminate so many employment opportunities in KZN which will also affect the 'food security' of their former employees. National food security has been raised on numerous occasions by Eversheds. To this end, a separate section has been dedicated to addressing this issue in the Final EIAR.
 - 24 Please refer to the comments made on points 9-20 in terms of economic impacts.
 - 25 None of these points appear to be based on reality. Rather, they appear to be Eversheds' own attempt to add reasons to try and support their 'fatal flaw' approach. RCL is selling numerous farms in KZN and cutting employment opportunities. They are apparently currently undertaking an EIA for a new laying farm near Rustenburg where layer production may be moved. In addition, Eskom has not proposed the relocation of RCL farms as the only mitigation necessary, but rather as a last resort option should other negotiated mitigation measures not be deemed sufficient.

- 26 The current zoning and land-use plans are not related to RCL's concerns, who, clearly from past EIAs in the area, object to any development on any of the surrounding properties. The 'misquote' is from the specialist study who calculated figures based on data provided by RCL Foods. All revenue and turn-over figures would need to be re-calculated by an independent auditor, including those provided by RCL, if compensation is to be calculated. Compensation as an option is mentioned in the FEIAR and was discussed in the key stakeholder meeting at which Eversheds was present. RCL was required to provide a percentage scale for which production losses and compensation can be negotiated. RCL has unfortunately not taken the opportunity to provide this.
- 27 This is not true. Potential economic disruptions to RCL's production have been investigated in detail and balanced carefully against the economic necessity of Eskom's role to supply electricity. The EAP has proposed a mitigation strategy to ensure RCL is not affected and Eskom is open to negotiating and planning this strategy forward with RCL as agreed between Eskom and RCL at the key stakeholder meeting. Eversheds' submission supposedly on 'behalf' of their client, reflects none of this, just the continued assertion that the whole application is fatally flawed. The food security of the nation, continually raised by Eversheds, has now been addressed in its own section in the FEIAR. Please note the Annexures sent and referred to in this submission do not seem to be the correct ones.
- 28 Please refer to the comments made on points 9-20 in terms of economic impacts.
- 29 National food security has now been addressed in its own section of the FEIAR. This proposed sub-station and potential impacts upon RCL Foods will not affect national food security and these continuous statements by Eversheds appear to be an uneducated attempt to raise their clients concerns about the sub-station to a 'national level of significance' when in fact they are not.
- 30 Please refer to the comments made on points 9-20 in terms of economic impacts. Food security is now also addressed in its own section in the FEIAR.
- 31 Potential impacts upon RCL were only identified for the initial stages of construction and the level of any actual impact is uncertain due to a lack of information from RCL and the fact that different flocks of birds can respond differently and also acclimatise to disturbances. For economic impacts, please refer to the comments made on points 9-20 and for national impacts please refer to the food security section added to the FEIAR.
- 32 Apart from consultations already held, Eskom will need to consult further with the Local Municipality and undertake any planning approvals necessary. However, national strategic infrastructure cannot simply be moved or cancelled because it does fit in with local municipal plans and a poultry producer that is currently downscaling and selling its farms.
- 33 Food security is now also addressed in its own section in the FEIAR.
- 34 EMF concerns have been addressed in the Isundu EIAR. This is a clear case where Eversheds continues to repeat old information. RCL Foods first used a variation of the 'Metamorphosis report' prepared by Vicky King in 2011 to appeal an adjacent housing development called Kingsthorpe Estate (now Aloe Wildlife Estate). This report was simply updated by Vicky King and sent to ACER within the first few weeks of announcing this project in 2014. Ms King has an environmental law degree and a BSc in Biological Science and Geography, and the report is based on a literature review. The EMF specialists appointed for this Isundu EIA were Dr R. Wolhuter and Dr J.P. Holtzhausen from the Department of Electrical and Electronic Engineering, Stellenbosch University, who are regarded as amongst the top EMF specialists in the country. Their report and EMF calculations based on what is proposed, found that there would be no significant EMF

impacts and any impacts were already masked by the existing 275 kV lines approximately 25 m from RCL's L14 farm. This existing line has been on RCL's property since the 1970s and RCL have expanded their facilities around it.

35 This point is addressed above and cumulative EMF impacts were calculated by the specialist.

36 This statement is not true or based on facts derived from the Draft EIAR. Economic impacts have been addressed in points 9-20, EMF issues are addressed in point 34.

37- 45 The poultry specialist stated the following with regard to biosecurity:

In this case the sub-station construction and operation should not unduly increase risk except for increase in vehicular traffic and construction staff in the vicinity. All construction staff must keep away from Rainbow property and access roads and not wander from the site. Proper toilet facilities must be available for and seen to be used by all construction staff.

The mention by Rainbow of a 10 km radius exclusion zone around their farms stems from the recommendation by the OIE that in the event of a major (List A disease such as avian influenza) disease outbreak all stock within a 3 km radius of the index premises would be slaughtered out and all other remaining stock within the 10 km zone be subject to quarantine and monitoring. Thus an ideal would be to have farms more than 10 km apart but in practice other livestock enterprises usually occur within shorter distances to one another. Rainbow themselves mention farms of at least 500 m apart. Again this is the principle of isolation as much as it can be achieved.

Biosecurity risks because of construction on RCL's property to implement mitigation measures such as closing L14 houses and constructing dust screens may exist, and also there may be risk from wind-blown dust. These will need to be managed in the same way RCL will manage any other contractor staff that may need to access their property and with the dust mitigation measures proposed. The compensation mechanism discussed at the key stakeholder meeting will also protect RCL from biosecurity losses. However, biosecurity 'ideals' which RCL itself does not manage to adhere to, cannot be put forward as a fatal flaw, especially considering the fact that RCL may not even be operating on the property when construction needs to start.

46-49 These comments on noise are uninformed and clearly made to just add objection on a subject where the science is difficult to understand. Noise has been investigated in detail with numerous site visits where existing measurements were taken during the day and night, joint blasting and geotechnical site investigations have been undertaken and numerous iterations between poultry, noise and blasting specialists have occurred.

Eversheds makes no mention of the fact that the poultry are in closed houses (all but L14 which would be closed), with thousands of chicken noises as well as with large ventilation fans running continuously. In addition, grass is mown regularly with tractor mowers around the buildings. Blasting will also take place during the day whereas thunderstorms and lightning usually take place at night, which is when the birds are most sensitive to noise disturbance. The test blast is also not the only mitigation. The test blast approach is to ensure that the various blasting, noise and other calculations are indeed correct and, if not, how the mitigation strategy needs to be adjusted to ensure no significant impacts occur. It will also not only be a once off 'mitigation', as continuous monitoring equipment is proposed to monitor noise and dust along with video equipment to ensure that the blast design for each blast is suitably adjusted to mitigate any impacts.

This is the most feasible approach to ensure that a strategic long-term infrastructure project is not deemed 'fatally flawed' just because it cannot predict with 100% accuracy now what is impossible to model accurately anyway. It is not possible to model how a specific flock of birds whose tolerance can vary, may or may not hear noise from a blast more than 500 m away when climate, topography, shape of the actual building, trees, or berms in-between, blasting depth and coverage, cloud cover and contractor performance can all play a role in noise levels heard. However, this potential risk from blasting noise is only estimated to be for a relatively short duration of 2-5 months and it is possible to manage and mitigate this short-term risk in such a way as to prevent any significant losses. This is what was proposed and will only be necessary if indeed RCL Foods are still operating on the property when construction commences.

- 50 Dust impacts have been investigated and modelled, and suitable mitigation measures have been proposed, along with continuous monitoring. Biosecurity is addressed in points 37-45.
- 51-52 Lighting has been taken into account. This is an example of how Eversheds clearly feels it is necessary to try to indicate that each and every concern they have raised is a 'fatal flaw'. Lighting was found to be an unlikely impact in the Draft EIAR and the sub-station is not surrounded by security floodlights that are 'on all night'. Eskom has taken the visual specialist's recommendations into account and presented the effects of the preliminary lighting design simulation programme at the key stakeholder meeting with RCL at which Eversheds were present. No impact is foreseen. Nevertheless, the Draft EIAR mitigation strategy still requires Eskom to monitor light dispersion at RCL once the lights are operational to ensure there are no impacts and to further mitigate any potential impacts, if necessary.
- 53 Please refer to the comments made on points 3.2 and 9-20 in terms of compensation, economic impacts and food security.
- 54 Please also refer to the comments made on point 3.3. Sub-station sites are determined on a range of criteria, one of the most important being the earthworks required. Eversheds demonstrates either a lack of technical understanding or simply that their main desire to 'successfully object to anything in their clients backyard' when they make such assertions. Transmission line corridors are more determined by sub-station locations than the other way around as it is easier to find suitable transmission line routes than sub-station locations. Thus, the impression that a transmission line alternative 'a short distance around RCL properties' ...'would have resulted in the current proposed sub-station being placed elsewhere', is incorrect.
- 55 This has already been addressed in point 3.4.
- 56 Sites can simply be dismissed on the fact that significant cut and fill are required, especially as some of the 'alternative sites' RCL proposed were completely unfeasible in terms of access and topography, just as they would have been discarded immediately for the same reasons if they were proposed as alternative locations for RCL farms. These RCL alternatives have been addressed in the Final EIAR. This point makes no mention of the fact that RCL may now not exist on the adjacent property when construction is set to commence, and the suggestion of relocating the farm contradicts earlier statements that it is not possible to alter, change or affect any of RCL's numerous interlinked operations.
- 57 The economic cost and impact of the no-go option for Eskom and for the residents of KZN will be significant. Thus, it is surprising that Eversheds can deem this to be the most viable option when the reality is that the RCL is already downscaling staff and trying to sell a large number of its farms in KZN, including the one in question.

- 58 If a distance of 5-10 km away from RCL is the 'very least' as far as RCL is concerned, then how is it that three of the five alternative sites RCL suggested for consideration were within 2 km of RCLs laying farm in question; the one alternative site being 940 m away from RCLs nearest laying house on the western side of the farm. The three potentially affected laying houses identified in the Draft EIAR are L14, L1 and L2 which range from approximately 420 to 950 m away from the proposed Isundu site. RCL's submission of these alternative sites as options to consider, invalidates most of the objections raised for the current site. One of RCL's alternative site suggestions simply moved the sub-station from the adjacent farm on the east of their laying farm, to the adjacent farm on the west of their laying farm.
- 59 This point has been addressed above.
- 60 Neither RCL nor Eversheds have the mandate to argue municipal planning principles or conflicts on behalf of local municipalities. Eskom will address these land use planning concerns through the appropriate forums when required.
- 61 This statement does not make sense. Eskom does not justify the location of strategic infrastructure solely on ecological issues.
- 62 Citizens in South Africa and KZN need both chicken and electricity. The Draft EIAR does not favour RCL or any other stakeholder more than another, nor does it attempt to treat Eskom more favourably. Some of the proposed mitigation measures are extremely onerous for Eskom, but have been insisted upon to ensure any impacts upon surrounding stakeholders, including RCL, are suitably mitigated.
- 63 Eversheds' assertion that this project may detrimentally impact both present and future generations in terms of economic prosperity and food security is complete nonsense. Economic impacts have already been addressed and food security has now been given its own section in the Final EIAR. In addition, implying that RCL is going to be 'deprived' of their property by the State, viz. Eskom, is also nonsense. At present, Eskom is not planning any infrastructure on RCL's property and so will not require any servitude or purchase agreement. Any land purchased by Eskom is undertaken in line with the laws of the country based on independent land evaluations. In addition, currently, RCL are reported to be trying to 'deprive' themselves of 15 of their 25 properties in KZN, which, based on this line of argument, is going to significantly impact present and future generations of South Africans.
- 64 This point is addressed in the points 63 and 65.
- 65 A risk averse and cautious approach has indeed been applied. Even though some impacts are uncertain and, as quoted from the Draft EIAR, may not have any significant impact at all, ACER has incorporated test blasts, monitoring and reiterative mitigation design into the construction programme to ensure that any impacts are identified and addressed early. A compensation process has been agreed too as well in order to act as a final tool in which to ensure no adverse impacts occur upon RCL.

In addition, a risk averse and cautious approach has also been incorporated into the no-development option because to quickly reject this proposed site based on surrounding stakeholder's concerns, when in fact some stakeholders may not develop their plans, whilst others are considering selling their properties, would not be in the best interests of the other 'affected' stakeholders of KZN, viz. the population relying on improved electricity supply.

66 This statement does not reflect or conclude with any comments on the Draft EIAR mitigation measures nor the points agreed upon at the key stakeholder meeting with RCL, at which Eversheds was present.

Finally, this submission leaves ACER with no other conclusion other than either RCL Foods has simply requested Eversheds to 'object' in principle, leaving it up to Eversheds to determine how to object, or that Eversheds is advising RCL Foods that just constantly objecting and then appealing is the best way to address their concerns.

Either way ACER is unsure if RCL Foods gets to read what is submitted on their behalf as it does not reflect the sentiments and discussions when ACER liaises or meets with RCL representatives.

ACER was anticipating comments and suggestions on the mitigation measures recommended and also input from RCL on how to take forward the key stakeholder meeting actions between Eskom and RCL with regard to implementing these mitigation measures, as well as a compensation scale based on production estimates.

However, this submission is simply an 18-page list reiterating the same list of concerns and items Eversheds has been raising since 2014, with the insistence that each on its own is a fatal flaw. Many of these points have already been addressed in previous correspondence. Furthermore, some of these points continue to demonstrate a lack of understanding, for example, of electrical infrastructure planning and food security issues whilst others contradict themselves such as the location of some of RCL's own suggested alternatives and their biosecurity concerns.

In addition, there is no recognition or mention of the fact that RCL Foods is significantly downscaling its operation in KZN and is considering selling the property in question.

After two and a half years of liaising with RCL and investigating their issues, ACER is disappointed with this submission. ACER was expecting a far more robust response, with key points RCL wished to see incorporated into the Final EIAR mitigation measures to ensure their points formed part of further discussions and any authorisation granted. Instead, this submission simply appears to be part of an ongoing 'EIA process game' Eversheds has embarked upon to obfuscate decision-making.

ACER has now finalised the EIAR based on the issues and concerns raised.

Yours sincerely,



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