



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

APPEAL QUESTIONNAIRE

An electronic copy of this questionnaire may be obtained from:

Mr Z Hassam at telephone: 012 399 9356 or e-mail:

AppealsDirectorate@environment.gov.za

Once completed, this document must be forwarded to:

E-mail: AppealsDirectorate@environment.gov.za

Physical Address: Department of Environmental Affairs, 473 Steve Biko Road,
Environment House, Arcadia, Pretoria, 0002

Appellant's contact information:

Name: BioTherm Energy (Pty) Ltd
Address: Building 1 Ground Floor, Design Quarter District
Leslie Ave East
Fourways
Phone: 011 367 4600
Cell: 082467 6555
Email: eiaadmin@biothermenergy.com

Project information:

Project name: Proposed Construction of the Sendawo 400kV Substation and 400kV Powerline near Vryburg, North West Province

Authorisation register number as on environmental authorisation:
14/12/16/3/3/2/894

Authorisation date as on environmental authorisation: 07 November 2016

IMPORTANT! Please note:

- *The decision of the department is reflected in the letter of authorisation or rejection. The conditions of approval are contained in the environmental authorisation document, attached to the authorisation letter.*
- *The appeal must be accompanied by all relevant supporting documents or copies of these that are certified as true by a commissioner of oaths.*
- *The grounds of your appeal and the facts upon which they rest must be set out. You should formulate your objections or concerns as averments and not as questions about the project. Please therefore refrain from material or remarks that do not contribute to the merits of your appeal.*

- *To assist in this regard, the following questions are listed as a guideline only – more space may be used if necessary:*

1. Are you lodging this appeal as an individual or on behalf of a community/organisation?

	Community/ organisation
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If on behalf of a community or organisation, please provide proof of mandate to do so.

Proof of mandate is attached to the form.

2. Is your appeal based on factors associated with the process that was followed by the applicant in obtaining authorisation?

	No
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Please provide reasons:

BioTherm Energy (Pty) Ltd is the applicant and the appellant.

3. Is your appeal based on factors associated with environmental impacts not taken into account by the department in refusing or authorising the application?

	No
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Please provide reasons:

4. Would you agree to the activity proceeding if your concerns can be addressed by rectifying the process or mitigating or eliminating the impacts of the activity?

Yes

Please provide reasons:

It is common practice for the DEA to authorise power line corridors over land which already has pre-existing authorisations. An authorisation for a powerline and a PV facility can co-exist with each other.

5. Are you fundamentally opposed to any development activity on the site?

 No

Please provide reasons:

6. Do you have an objection in principle against the development?

 No

Please provide reasons:

The applicant is asking the Department to overturn its decision and grant authorisation for the proposed project.

7. Does your appeal contain any new information that was not submitted to the environmental consultant or department prior to the department's consideration of the application?

 Yes

If the answer above is yes, please explain why it should be considered by the Minister and why it was not made available to the environmental consultant or department during the application process.

It is apparent from the Refusal and particularly section 1 of Annexure 1: "Information considered in making the decision", that the DEA did not consider the Response to the Objection received from Sediba Solar Power Plant (Pty) Ltd which was submitted by BioTherm on 8 November 2016. This is clear both because the Response to the Objection is not referred to in the Refusal of authorisation and because the Refusal was issued on 9 November 2016, one day after the Response to the Objection was submitted.

8. DECLARATION:

I declare that the contents of this submission are to the best of my knowledge the truth and I regard this declaration as binding on my conscience.



APPELLANT

DATE: 25 November 2016



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002

Email: Appealsdirector@environment.gov.za

APPEAL RESPONSE REPORT

PROJECT NAME/TITLE: Proposed Construction of the Sendawo 400kV Substation and 400kV Powerline near Vryburg, North West Province

PROJECT LOCATION: North West Province

PROJECT REFERENCE NUMBER: 14/12/16/3/3/2/894

DATE PROJECT/ACTIVITY AUTHORISED: 07 November 2016

DETAILS OF THE APPELLANT	DETAILS OF THE APPLICANT
Name of appellant: BioTherm Energy (Pty) Ltd	Name of applicant: BioTherm Energy (Pty) Ltd
Appellant's representative (if applicable): Jasandra Nyker	Applicant's representative (if applicable): Jasandra Nyker
Postal address: PO Box 69408 Bryanston 2021	Postal Address: PO Box 69408 Bryanston 2021
Email Address: eiaadmin@biothermenergy.com	Email Address: eiaadmin@biothermenergy.com
Telephone number: 011 367 4600	Telephone number: 011 367 4600
Fax Number: 011 367 4601	Fax number: 011 367 4601

GROUNDS OF APPEAL	RESPONDING STATEMENT	COMMENT BY THE DEPARTMENT / DMR
<p>1. Powerline and Facility EA's can co-exist without hindering the operations of the other.</p> <p>1.1 It is common practice for the DEA to authorise power line corridors over land which already has pre-existing authorisations. For example the DEA has recently and in the past, authorised power line corridors which traverse properties in respect of which environmental authorisation has already been granted by the DEA for other renewable energy facilities.</p>		
<p>2. An alternative route was assessed in the Scoping Phase but was the least environmentally preferred.</p> <p>2.1 An alternative route (alternative 1B) was proposed during the scoping phase of the project as can be seen in Figure iii on page 8 of the Final Scoping Report ("DSR"). This route was, however, excluded from the process because its environmental impacts were shown to be greater</p>		

<p>than those of the preferred route. Most specialists involved in the environmental studies noted the proposed alternative route as their least preferred route due to environmental sensitivities, as per the Final Scoping Report ("FSR"). Eskom has also indicated that the preferred route is its preferred connection.</p>		
<p>3. Ample time was given for Public Participation to Interested and Affected Parties.</p> <p>3.1 It is important to note that representatives of the Sediba Project developer, Sediba Solar Power Plant (Pty) Ltd ("Sediba Power"), were registered as Interested and Affected Parties ("I&APs") for the Powerline Project on 11 January 2016 during the scoping phase. Their details are contained in the I&AP database that was included in both the DSR (11 January 2016) and FSR (19 February 2016).</p> <p>BioTherm questions why neither representatives of Sediba Power nor of the DEA informed BioTherm or the Environmental Assessment Practitioner ("EAP") for the proposed Powerline Project, about the existence of the Sediba Project during the Scoping Phase of the Powerline Project. This would have enabled BioTherm to engage with representatives of Sediba Power and to assess the impacts of the proposed Powerline Project on</p>		

<p>the Sediba Project, from the outset of the process. It was only on 1 September 2016, in response to the final EIAr, that representatives of Sediba Power first raised an objection to the proposed Powerline Project. A formal objection was only lodged by Sediba Power on 1 November 2016. The objection and BioTherm's response to it ("Response to Objection") are attached hereto as Appendix A and Appendix B.</p> <p>Notwithstanding Sediba Power's failure to engage until very late in the process, BioTherm and its representatives are proposing a layout for the proposed Powerline Project which minimally impacts upon the Sediba Project and will not hinder its operations.</p>		
<p>4. Not all the supplied information was considered in making the decision.</p> <p>4.1 It is apparent from the Refusal and particularly section 1 of Annexure 1: "Information considered in making the decision", that the DEA did not consider the Response to the Objection, attached hereto as Appendix B, which was submitted by BioTherm on 8 November 2016. This is clear both because the Response to the Objection is not referred to in the Refusal and because the Refusal was issued on 9 November 2016, one day after the Response to the Objection was submitted. It is very unlikely that in one day, the DEA would have</p>		

<p>had sufficient time to consider, assess and incorporate the Response to the Objection in relation to the Refusal and to issue the Refusal.</p> <p>Failure of the DEA to consider the Response to the Objection before granting the Refusal prejudices BioTherm and accordingly is an unfair administrative process.</p>		
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GUIDELINE:

- 1. NB: all grounds of appeal/objections must be submitted in English.

- 2. The template does not limited to only 3 grounds of appeal, objections, additional rows may added and the supporting documents, if necessary, may be attached.

3. Project name/title – refers to the name of the project authorised by the Department against which you intent to appeal/object OR it may refer to the matter/issue against which you received a compliance notice
Example: Development of Pretoria 400kv power station
4. Project location-- refers to the specific location upon which the project/activity has been authorised to take place, it must include the specific farm portion/portion of a portion number, farm number, town/city/village name, municipality name, province name.
Example: portion 2 of the farms Roseville 453 RS, Pretoria, Gauteng Province
5. Project reference number- refers to the Departmental reference number that appears on the authorisation/permit/license document/compliance notice
6. Date project/activity authorised- refers to date the authorisation/compliance notice was signed by the Department.
7. The appellant must fill his/her personal details in the first row of the table on page 1.
8. The appellant must fill the grounds of appeal according to the template on page 2.
9. The grounds of appeal/objections by the appellant must have specific title and followed by detailed grounds.

Example:

1. Inadequate public participation process

1.1 the applicant did not advertise the project on local newspaper

1.2 The issues raised during the public meeting were not addressed in the final reports.

2. Impact of the development on sensitive environments

2.1 There are a number of bull frogs that breed on site, the impacts on these species were not identified and assessed.

2.2 The proposed development will impact on the red data species occurring on site.

10. The applicant must respond directly to the grounds of appeal/objections and specifically address the grounds of appeal/objections as listed by the appellant; the applicant is allowed to elaborate further than the ground of appeal if necessary.

11. Any further queries and enquiries in relation to this template must be addressed to the Departmental contact details on page 1.