



## **Energy Regulatory Commission**

Eagle Africa Centre, Longonot Road, Upperhill

P.O. Box 42681-00100

Nairobi, KENYA

Dear Sir or Madam,

### **RE: SUBMISSION OF OBJECTION FOR THE APPLICATION FOR AN ELECTRICITY GENERATING LICENSE BY AMU POWER FOR THE 1,050MW COAL FIRED POWER PLANT IN LAMU COUNTY**

Amu Power Company Limited (“**APCL**”) proposes to develop a 1,050MW coal fired plant in the Kwasasi Area of Lamu County approximately 21km from Lamu Town. APCL placed a notice in the Daily Nation on 12<sup>th</sup> September 2016 and filed it’s appeal with the Energy Regulatory Commission (“**ERC**”) on the 28<sup>th</sup> of September 2016.

Pursuant to Section 28(4) of the Energy Act, 2006 and Regulation 8 of the Energy (Electricity Licensing) Regulations, 2006, we now herewith enclose our objections to the proposed project development for consideration.

These objections contains examinations of the key issues of concern with this project that the ERC should take into account in determining whether to grant Amu Power a licence or not. Moreover, we rely on the following factors listed in Section 30 of the Energy Act as the ERC determines whether to grant a license or not:

- Section 30(1)(a) – the impact of the undertaking on the social, cultural or recreational life of the community;
- Section 30(1)(b) – the need to protect the environment and to conserve the natural resources in accordance with the Environmental Management and Coordination Act, 1999;
- Section 30(1)(d) – economic and financial benefits to the country or area of supply of undertaking;
- Section 30(1)(e) – the economic and energy policies in place from time to time;
- Section 30(1)(f) – the cost of the undertaking and financing arrangements;
- Section 30(1)(g) – the ability of the applicant to operate in a manner designed to protect the health and safety of...members of the public who would be affected by the undertaking;
- Section 30(1)(i) – any representations made under section 28(4); and,
- Section 30(1)(j) – the proposed tariff offered.



To support our objection to this application by APCL, we rely on expert analyses of the application and the project.

### **1. Mr. Hindpal Jabbal**

Mr. Hindpal Singh Jabbal is an authority in Kenya's power system, who joined EAPL (now Kenya Power) in 1961. He gradually rose to the position of Corporate Planning Manager (1979) before taking an earlier retirement from the Kenya Power and Lighting Company (KPLC) in 1987.

After leaving KPLC, he was appointed General Manager of a utility in the West Indies (1987 to 1991). He was then appointed Technical Advisor to the Ministry of Energy (1998 to 2004) under World Bank Funding and finally he was made Chairman of the Energy Regulatory Commission (2007).

Over the past few years, especially since 2008, when Vision 2030 was launched, he has made several presentations in the international conferences like EAPIC and IRENA and has published several articles in the local press including *Kenya Engineer* and the *Journal of Institution of Engineers of Kenya* (IEK).

Mr. Jabbal's analysis of the project reveals that this project should not be granted a license on three grounds: technical, economic and location.

- On technical grounds, he argues that the base load growth projected for the next number of years does not merit the introduction of a coal power plant – there is no demand for this project and renewable forms of energy are sufficiently capable of meeting all our demands for a good portion of the near future.
- On economic grounds, Mr. Jabbal shows how the details provided to the ERC as part of APCL's application contain miscalculations of the fuel prices used which are indicative of the time when the tender was awarded in 2014 – the actual price will be paid on the coal price at the time of delivery which increases the cost KPLC is to pay from UScts 7.5/kWh to UScts 10.1/kWh.
- On the site grounds, the cost of the jetty and storage facilities at the port, the new 400kV transmission line and the future 300km railway line from Kitui will increase the project's costs by US\$2.13billion.

His detailed report and analysis supporting this objection is attached to this document as Annex 1. His report helps guide your decision when relying on factors in Section 30(1)(d), (e), (f) and (j).



## 2. Independent Research on the License

Our objection is also supported by research we compiled to indicate that the project should not be granted a license attached as Annex 2. This research helps guide your decision when relying on factors in Section 30(1)(b), (d), (e), (f) and (j).

## 3. EIA Study Comments submitted to NEMA

Finally, the comments we made to NEMA with respect to the project's EIA Study Report are attached as Annex 3. These comments help guide your decision when relying on factors in Section 30(1)(a) and (b). Our comments to NEMA critiquing the EIA Study Report are listed below and given in detail in the annexure.

- *Comment 1: Lack of proper public participation during the ESIA Study as required under Kenyan law*
- *Comment 2: Concerns related to the Resettlement Action Plan and Allocation of Land are not Addressed*
- *Comment 3: Effects of the thermal effluent discharge on the marine environment and criticism cooling system technology*
- *Comment 4: Poor analysis of alternatives and economic justification*
- *Comment 5: Segmentation of the scope of the ESIA Study understates*
- *Comment 6: Climate change impacts are undermined and inconsistent with Kenya's commitments*
- *Comment 7: Air and noise quality is compromised and no mitigation cited*
- *Comment 8: Negative impacts on livelihoods are not sufficiently addressed*
- *Comment 9: Inconsistent and inadequate information in the ESIA Report*
- *Comment 10: Insufficient public hearing that was not in compliance with the law or best practices*

On the basis of the research presented and annexed to this letter of objection, we request that the ERC **does not** grant a License to APCL for this project.

Sincerely,

**Shalom M. Ndiku**

**Natural Justice: Lawyers for Communities and the Environment**

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