

The Portfolio Committee
Rural Development & Land Reform
3rd Floor, 90 Plein Street
Cape Town
8001
Attention: Ms Phumla Nyamza

Date:
13 August 2012

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Dear Madam

SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2012

We thank the Portfolio Committee on Rural Development and Land Reform for granting us an opportunity to comment on the Draft Spatial Planning and Land Use Management Bill ("SPLUMB").

Our comprehensive comments dealing with specific sections of the SPLUMB are attached separately to this letter. In addition Eskom would also like to highlight the following general comments:

1. In order to try and understand the background to the SPLUMB and to get an opportunity to explain the impact that the proposed Bill is going to have on the business of institutions such as Eskom, discussions were held with representatives of the Department of Rural Development ("Rural Development") department, other state owned entities and officials of the Department of Public Enterprises.
2. According to the briefing provided by Rural Development, the need to develop the proposed Bill arose out of the ruling of the Constitutional Court in the matters of Maccsand (Pty) Ltd v City of Cape Town & Others ("Maccsand") and The City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal & Others ("CoJ"). In our view the judgments should not be a trigger for the proposed legislation which does not contain exemptions in the broader theme of national interest.
3. Under the Land Use Planning Ordinance 15 of 1985 ("LUPO") (Western Cape) and other various Provincial Ordinances, Eskom is exempt from making applications for development. However, Eskom does not build power lines in total disregard of Municipal Development Frameworks. The relevant municipality plans have always been requested and considered. It is our view that exemptions for essential services should be carried through to the national legislation.
4. The application of the proposed bill on linear infrastructure will have great impact on Eskom. Its application means for example that for construction of power lines that crosses different municipalities Eskom, will have to apply to all the affected municipalities for approval. The prospect of one municipality objecting or delaying the approval will cause enormous delay, inconvenience and may be very costly in that it may even necessitate a



deviation of the line and the cost of deviating a 132 kV line may amount to R 1 500 000 per kilometre with the costs being much higher for a transmission line.

5. The provisions in section 52 with regard to national interest determination are not broad enough to left land use for services such as electricity to ministerial determination. Consideration should be given to list certain services rendered by State Owned Companies as national interest activities which will be exempted from the legislation within a prescribed consultation process if required.
6. It is not clear from the bill whether there is a way in which Eskom will give input into the different spatial development frameworks at the various levels of government.
7. It is not clear from the bill which sphere of government would have the final say in instances where there is no agreement on an application, particularly in those instances where a project spans through more than one municipality or province.

In the discussions held with Rural Development its officials requested that the affected institutions should not only criticize the bill but should also propose ways of working around the envisaged difficulties with the bill. Eskom has considered the bill and is of the view that it would be best to have a single national planning legislation and in the absence of that, Eskom and other entities that offer essential services be exempted from the application of the bill. Eskom will continue to share its plans with the municipalities and assist in the strategic planning to national benefit.

Eskom is of the view that the impact that the bill will have, not only on its anticipated projects but also for other State Owned Companies involved in projects spanning over a number of municipal boundaries, should not be underestimated. Clearer definition of national interest type projects may alleviate the impact if a national mechanism is identified to deal with such developments.

We trust that our input will be received as value-adding to the overall process.

Yours sincerely



Willie du Plessis
General Manager: Legal & Compliance